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STATE OF WASHINGTON
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COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

CITY OF EDGEWOOD, Appellant

vs.

HAIST, LLC, et. Al, Respondents

REPLY BRIEF OF RESPONDENTS ERIC DOCKEN, DOCKEN
PROPERTIES, LP, ENID AND EDWARD DUNCAN, JAMES AND
PATRICIA SCHMIDT, DARLENE MASTERS, AKA THE BRICKHOUSE,
LLC, GEORGE AND ARLYN SKARICH, SUELO MARINA, LLC,

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ORIGINAL

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I. INTRODUCTION / SUMMARY

Property owners/ Docken¹ (“Owners”) respond to the City. Nothing in the City’s response overcomes the clear conclusion, supported by the record, that throughout this LID hearing process, the City cut corners, abbreviated appeal timelines and crippled the City Council’s consideration of property owner information through the rushed process. Owners rely on all issues raised in their Opening Brief; and respond to the City selectively herein.

In addition to statutory and constitutional flaws, the records shows several substantial deviations from even the City’s own adopted processes, each of which supports nullifying the assessment Ordinance. The Court is urged to look to the actual content of the record cited by the City in defense of its rushed processes, as opposed to simply accepting the City’s characterization of the record. For that purpose, copies of the specific pages in the records cited by the City are attached hereto in numerical order for the Court’s reference and consideration as part of this Reply.

II. CORRECTION TO CITY “FACTS”

Owners cite to and rely on the Facts as stated in their Opening Brief. In addition, Owners correct the misstatements contained in the City’s Brief as follows:

¹ Eric Docken, Docken Properties, LP, Enid And Edward Duncan, James And Patricia Schmidt, Darlene Masters, Aka The Brickhouse, LLC, George And Arlyn Skarich, Suelo Marina, LLC

City Allegation & Page No.	Correction
Macaulay also conducted field inspections of the subject parcels. <i>City Brief</i> at 7.	Mr. Docken requested that the City produce the results of any so-called “field inspection” that had taken place on LID no. 1 property belonging to Eric Docken. Mr. Docken received a printout from the publicly-available Pierce County Assessor website and nothing more. The Court should reject the City’s contention that parcel visits took place. CP 659- 689.
Background information regarding parcel sizes and other unusable areas was provided by city staff. <i>City Brief</i> at 7.	The City’s own Edgewood Buildable Land report cannot be reconciled with the Macaulay study because the City’s report states that over ninety percent of the land in Edgewood can be developed as compared to the buildable land study conclusion that fifty eight percent of the land in Edgewood can be developed. CP 1628 – 2079, HE TR 67:28-68:1.
Macaulay & Associates utilized a “mass appraisal” approach to the valuation process and accordingly did not prepare separate parcel appraisal reports for each individual property within the LID. <i>City Brief</i> at 7.	Lacks Citation; likely because Macaulay himself, on cross examination, did not in fact know how the numbers that the City ultimately adopted were arrived upon. HE TR 141:8 – 141:10 (“I’m going to ask you to -- - I’m not familiar with that chart so she [undisclosed appraiser trainee Ashley Zacharia] can address that.”)
Macaulay’s methodology utilized valuation approaches consisting of the “income” approach, the “sales comparison” approach (i.e. identifying and comparing sales listing of similar properties), and the “cost” approach. <i>City Brief</i> at 7.	Macaulay undisputedly deviated from the statutorily mandated zone-and-termini appraisal required by RCW 35.44. Special benefit studies may only deviate from the zone and termini method when the City has made an express finding that such a deviation will result in enhanced fairness. RCW 35.44.047. Here, the City Consultant himself does not know how the values in the spreadsheet that the City ultimately adopted as the LID assessment role were arrived upon. HE TR 141:8 – 141:10. The City certainly did not authorize any deviation from the zone and termini method, nor did it ever conclude that another method would more fairly reflect the special benefits to the properties being assessed. Even if the City did authorize deviation, the consultant’s LID

	<p>protest hearing testimony made it clear that no particular, cognizable appraisal method – including zone and termini - can be ascertained from the assessment role: “I’m going to ask you to --- I’m not familiar with that chart so she [undisclosed appraiser trainee Ashley Zacharia] can address that.”). Id.</p>
<p>The City Report maintained proportionality among the special benefit estimates and treated properties consistently to most accurately reflect the special benefit indicated by the market; parcels were generally grouped based upon their respective locations and zoning designations, with a range of accrued special benefits provided for each category. City Brief at 10.</p>	<p>At hearing, numerous protesters came forward with objective inconsistencies in the report. <i>i.e.</i> HE TR 98:24 – 99:2. Macaulay ultimately acquiesced in some of the assigned inconsistencies in the report and recommended a reduction in certain assessments. CP 1083 – 1088.</p>
<p>In April 2011, the Edgewood City Council adopted Ordinance No. 11-031, designating the City of Edgewood Hearing Examiner.... <i>City Brief</i> at 7.</p>	<p>One consistent City averment that must be corrected is this notion that the City adopted a number of ordinances pertinent to the LID, the recent zoning scheme underlying the LID benefit study, and LID procedures. However, since the beginning of this process, the Owners noted a number of flaws with City ordinances themselves, and went to far as to write a letter before the hearing, CP 110-112, requesting that the LID protest hearing be rescheduled, in part due to City’s faulty ordinance adoption, which was greatly expanded upon at the protest hearing. HE TR 74:5 – 81:8.</p>
<p>Although not required by statute, the City mailed a preliminary letter to landowners on April 20, 2011, notifying them of the June 1 hearing date, generally describing the assessment process, and explaining the applicable protest and appeal</p>	<p>The Superior Court in this matter found that the evidentiary standards which the City actually imposed upon the protest procedures were so far out of line with the statutory guidelines and city correspondence stating that “the Hearing Examiner will consider all written and oral testimony” as to render the notices meaningless and volatile of the property owners’ constitutional rights.</p>

procedures and timeframes. <i>City Brief</i> at 10-11.	CP 216 – 217, <i>compare</i> CP 66 Hearing Examiner Conclusion 1. (“No protesting property owner has carried its required burden of proof that its final assessment is founded on a fundamentally wrong basis and/or that the City’s appraisers Final Special Benefit/Proportionate Assessment Study is arbitrary and Capricious”)
Formal statutory notices of the hearing were subsequently mailed to affected landowners on May 12, 2011, and published twice in the local newspaper. <i>City Brief</i> at 11.	No affidavit of publication has ever been offered by the City, despite LID property owners specifically calling into question whether the ordinance had been published pursuant to adoption before the protest hearing. CP 110-112. Here the City has not cited to the record of any publication affidavit, and its contention that the notice was properly published should be ignored.
None of the landowners presented live testimony from appraisal experts to challenge the content or methodology of the Macaulay report. <i>City Brief</i> at 11.	The Docken appellants retained and brought a certified appraiser to the protest hearing. The appraiser attended all testimonial portions of the hearing. The City only did not establish a procedure for cross examination of the property owners at the hearing, and in fact never requested testimony from the appraiser. HE TR 6:25 – 7:25. To say that the City was somehow denied live appraiser testimony is disingenuous.
After summarizing the landowners’ various objections and reciting the applicable standard of review, the Hearing Examiner concluded that <i>City Brief</i> at 12.	The applicable standard of review was laid out in the various notice letters the City send – “the Hearing Examiner will consider all written and oral testimony.” <i>See</i> CP 216-217. The Hearing Examiner deviated from that standard and applied an appellate court standard of review regarding fundamentally wrong and arbitrary and capricious showings. The purpose of the lower tribunal is to engage in fact finding and act upon those facts. The appellate court- engaging in a third or fourth layer of review in an LID proceeding - will review the arguments made from the administrative facts at the Superior Court level for fundamental incorrectness or arbitrary and capricious action. The Hearing Examiner here derogated both his noticed

	and statutory duty by applying an inapplicable standard of review at the administrative level.
After deliberation and an unsuccessful first vote, the four participating Council Members voted unanimously to sustain the appeal and reduce the assessment of one landowner. City Brief at 14.	The first vote successfully defeated the LID assessment confirmation. What transpired next was a revote within the meaning of Roberts Rules of Order, Newly Revised, which the City has adopted to govern council actions. Roberts Rules prohibits revotes and adoption pursuant to an illegal revote is a nullity.

III. AUTHORITY & ANALYSIS

A. City Misstates Or Misunderstands LID Presumptions & Burdens

“A presumption is not evidence and its efficacy is lost when the other party adduces credible evidence to the contrary Presumptions are the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.” *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983).

If testimony on the issue of special benefits is produced by the property owner, the presumptions in favor of a municipality disappear. “Presumptions are the `bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.” *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983), *review denied*, 100 Wn.2d 1037 (1984);quoting *Mackowik v. Kansas City, St. J & C.B. R.R. Co.*, 94 S.W. 256, 262 (Mo. 1906).

1. Owners’ Evidence Shifted the Burden

Once a property owner produces competent testimony sufficient to rebut the presumptions in favor of the municipality, the burden shifts back to

the municipality to introduce competent evidence of benefit. *Id.*

In arguing the burden never shifted, the City misstates the Court's ruling at Opening Brief at p.30 by adding the extra underlined word: "These presumptions may be overcome only if the party challenging an assessment presents competent expert appraisal evidence demonstrating that the subject property is not benefited by the improvement or challenging the amount of the assessment. *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 842-43, 670 P.2d 675 (1983). In truth, the *Indian Trail* Court required only "evidence" and or "expert testimony". "Whether property is specially benefited by the improvement and the extent of the benefit are questions of fact, *In Re Jones*, 52 Wn.2d 143, 146, 324 P.2d 259 (1958); *Hargreaves v. Mukilteo Water Dist.*, 43 Wn.2d 326, 333, 261 P.2d 122 (1953), to be proved by **expert** testimony." And:

A presumption is not evidence and ***its efficacy is lost when the other party adduces credible evidence to the contrary.*** . . . The sole purpose of a presumption is to establish which party has the burden of going forward with evidence on an issue. . . . (Citations omitted.)

In re Indian Trail Trunk Sewer Sys., 35 Wn. App. 840, 843, 670 P.2d 675 (1983), *review denied*, 100 Wn.2d 1037 (1984). There is likewise no authority as the city claims that the testimony be live. Here, the Owners presented expert testimony via the ***sworn declaration*** of Appraiser John Trueman. The burden to justify valuations thus shifted to City.

To hold otherwise would make the presumptions in favor of the City conclusive and render the hearing and statutory appeal process on an assessment roll useless.

Consequently, the trial court correctly determined the council's decision was arbitrary and capricious and should be annulled.

Bellevue Assocs. v. Bellevue, 108 Wn.2d 671, 675, 741 P.2d 993 (1987), citing to *In re Indian Trail Trunk Sewer Sys.*, supra at 843. The same is true here.

The City concedes the standard of adequacy is: “The opinion of any such expert must be supported by an adequate foundation and based upon facts rather than speculation or conjecture”. *Time Oil Co. v. City of Port Angeles*, 42 Wn. App. 473 , 489-80, 712 P.2d 311 (1985). If-and only if-such evidence is submitted, the burden shifts to the City to prove that the property is in fact benefited”. City Opening Brief at 30.

Here, in conformance with that City-conceded standard, the Owners’ Appraiser first stated the facts upon which his opinion is based, and then his opinion:

2. In particular, I have reviewed an appraisal prepared for the City of Edgewood by Macaulay & Associates, LTD. as of May 10, 2011.
3. The appraisal numbers 152 pages and has significant discussion as to area statistics, current zoning, numerous sales of improved and unimproved properties and concludes with ranges of value of special benefits per square foot ranging from \$0.25 to \$4.25 and recommended assessments per square foot of \$0.19 to \$3.15 per square foot.

8. The May 10, 2011 Report does not include appraisal evidence showing how and the amount to which the properties would be benefited by the improvement as described by the City.

CP 801-5. Copy attached. The Owners’ evidence thus shifted the burden back

to the municipality to introduce competent evidence of benefit, *Id.*, which they did **not**.

2. Trueman Declaration Shifts Burden, Which City Did Not Overcome.

Appraiser John Trueman pointed out the blatant deficiencies and information gaps within the City's Consultant Report, without which no special benefit can be established:

7. What the report does **not** show is the calculations illustrating how these estimates were prepared utilizing sales in a before and after analysis.
8. Additional information provided utilizes Pierce County Assessors assessment records, which may or may not have a relationship to market value in the before and after analysis.
9. What is needed is an actual determination, based on a before and after analysis, to establish what the property was worth prior to the LID project to measure the actual special benefit and how it compares to the LID assessment.
- 10. What is missing in the Report is any consideration of the physical condition, locality and environment of the property involved, and the character of any improvements.**
- 11. Thus there is no way to reasonably conclude the sewer an improvement is a benefit; and or the amount of the accrual special benefit, or that any assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.**
12. The May 10, 2011 Report does **not** include appraisal evidence showing how and the amount to which the properties would be benefited by the improvement as described by the City.

See *Declaration of John Trueman* Appraiser, HE Exhibit 31, CP 801-5 *emphasis added*. The City at Opening Brief 53 attempts to overcome

Appraiser Trueman's expert opinions on the McCauley deficiencies:

"Although Mr. Trueman opines that a "before and after" analysis is required for the City's assessment process. (CP 803). This analysis, however, is precisely what the Macaulay report contains-at great length and in great detail. CP 1537, 1482-87.

Yet, what the City describes as McCauley's offering of a "great detailed" "before and after" analysis for 161 parcels with \$28,000,000 value is a **mere six pages** – without any of the requisite details. CP 1482-87. The City also claims:

*The Trueman declaration also asserts that Macaulay & Associates failed to clearly consider the "physical condition, locality and environment of the property involved, and the character of any improvements." CP 803. But, the Macaulay report stated that the exterior of each property was **physically inspected**. CP 1465.*

Yet, rather than "physically inspected", "the McCauley Report at CP 1465 actually states that "**Personal inspections** have been made of the exterior of all parcels within the LID project boundary". See CP 1465. And no narrative of any "consideration" is in the record of this appeal. Instead, "Summary data on each parcel within the proposed boundary is shown in the spreadsheet starting on page 11". Id. Although reference is made to "More detailed property description information is contained in the appraisers' files and is available upon request," the City did not present such at hearing or include it within this Court's record. The City in reply also contends that, "The extraordinarily lengthy, detailed and thorough appraisal analysis prepared by an undisputedly credentialed consultant (Macaulay & Associates) is, in and of itself, sufficient to

support to the City Council's confirmation of the LID No. 1 assessment roll. CP 1464-1626." City Opening Brief at 17.

Again the Court is urged to hold the City to an accurate characterization of the record. When the boiler plate Report information is discounted, only a scant 30 pages of the McCauley Report remains (to "appraise" 161 properties. That 30 page content is neither detailed nor thorough. See CP 1526-1556. Copy attached. Those scant 30 pages equate to not quite one page for ten acres, or one-fifth of a page for each of the 161 affected parcels and ***less than one page per million dollars assessed against these property owners.***

Certain additional averments of the City bear calling out. The City repeatedly refers to the Macaulay report as containing "appraisals" of the LID properties; see City Opening Brief at (at least) pages 17, 34, 51, etc. But- even the Macaulay report does not go so far as to make that claim. Instead, the Report admits it is (only): a "final special benefit/ proportionate assessment study for the Meridian Avenue sewer local improvement district (LID) project" which contains "The ***estimates*** of special benefit presented herein". "It includes limited discussions of the data, reasoning and analyses utilized in the valuation process" the report is "the result of a limited valuation process." All at CP 1465. Copy attached. See also the Report's admission that "values ranges" were established for groups of properties, from which "market value estimates" were made. CP 1537. Copy attached.

The City Brief claims at page 59 that “Macaulay & Associates explained and summarized the methodology for determining special benefits to emphasis the “with and without” approach. CP 1482-1486.” Yet, the “market value conclusions” which the City cites to and relies on consists of a three page graph of vision defining numbers with no supporting narrative at all as to each of the 161 affected parcels that are expected to shoulder the \$28,000,000 burden.

Even the Hearing Examiner found as a fact that the “The appraisers did not prepare individual parcel appraisal reports, but did prepare market value conclusions for each parcel both without and with the LID.” HE Finding No. 9. CP 58. Nor as the city claims does the report include detailed description of the properties at CP 1544-1557. The *Bellevue* Court rejected the City appraisal in that case based precisely on the failure to appraise individual parcels.

3. Trueman Appraisal Relief Extends to Others

Of further note, the *Indian Trail* Court did **not** confine the benefit of the expert testimony to only the specific property about which the expert testified, but **extended** that relief to other parcels, similarly situated.

The City asserts that **since the Wards, Johnstons and Mr. Bell failed to offer expert testimony at the city council hearing the presumptions were still operative as to their property. We disagree.** This property was located in close proximity to the property on which expert testimony was given. **This was sufficient to shift the burden of proving special benefit to the City. It did not carry this burden.**

Id at 843. The relief provided by the Owner’s appraiser’s sworn statement

should likewise extend as the flaw due to lack of methodology and valuation support was borne by all property owners. Accordingly, the City and Examiner erred in Finding No 16 by finding that “none of the above listed property owners submitted expert appraisal testimony or expert evidence to substantiate their protests,... the City Council should uphold the assessments for said parcels and reject the protests.” CP 60-61. In fact, at least two and likely more of the listed property owners adopted by reference the argument of GLG Law Firm, which incorporated by reference the Trueman testimony under oath. (Enid and Edward Duncan, LID Parcel No. 2, HE Exhibit 12 CP 107-176 and Dexter Meacham, LID Parcel No. 31, HE Exhibit 28, CP 623-625). The Trueman testimony is sufficient to shift the burden back to the City to establish the appropriateness of the challenged valuation. The City Council erred by not correcting this.

B. City Wrong: This Court’s Judicial Standard of Review on Appeal is Statutorily Broader.

Significantly, on appeal the burden on this Court is only to find “**evidence** that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious”. RCW 35.44.250². Nor is there any

² (“At the time fixed for hearing in the notice thereof or at such further time as may be fixed by the court, the superior court shall hear and determine the appeal without a jury and the cause shall have preference over all other civil causes except proceedings relating to eminent domain in cities and towns and actions of forcible entry and detainer. The judgment of the court shall confirm, **unless the court shall find from the evidence** that such assessment is founded upon a fundamentally wrong basis and/or the

specific statutory restriction on the type of evidence which the court may consider in reviewing the legislative action other than the restriction which might follow implicitly from the use of the term fundamentally wrong basis and/or arbitrary or capricious. *Cammack v. Port Angeles* 15 Wn. App. 188, 548 P.2d 571.

The *Kusky* case cited by the City at Brief 17 is in complete accord: “A landowner challenging an assessment has the burden to prove, **by competent evidence**, that the assessment was founded on a fundamentally wrong basis or was imposed arbitrarily or capriciously. *Kusky*, 85 Wn. App. at 500”. This Court should so find.

C. Jurisdictional Defects Not Addressed by the City

A wholly independent basis for the superior court to review confirmation of an LID assessment role invokes the superior court’s inherent, or constitutional jurisdiction. *See Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005). An assessment role review proceeding under the superior court’s constitutional jurisdiction is called a jurisdictional challenge. *Id.* Jurisdictional challenges are not governed by RCW 35.44. *Id.* In its Opening Brief, the City failed to directly rebut any of the Owners’ jurisdictional challenges.

IV. CITY OF EDGEWOOD LID PROCESS IS CONSTITUTIONALLY FLAWED

decision of the council or other legislative body thereon was arbitrary or capricious; in which event the **judgment of the court shall correct, change, modify, or annul the assessment** insofar as it affects the property of the appellant”.

A. City Process Void Due to Flawed Notice

The City's overall response to the plentiful notice defects is lame and disingenuous. The City Brief laboriously describes the years of formation, planning and construction, with the inference that property owners could have used all this time to be ready to prepare to refute assessments. The City began its "value estimates" in December, 2010 after all. The misleading aspect of this approach is that for the affected property owners, the only true operative time is that period between when you know the amount of your own assessment for your individual parcels and the LID hearing, when you contest that assessment. This is the crucial crunch time, and the only time when property owners have something to react to.

The City claims it meet statutory notice timeframes. Yet, when the clock started by the city's notice of the actual LID hearing date (May 12, 2011) the City also eroded away the next days and hours that by its missteps, revised notices, and roadblocks to obtaining the actual meaningful information. When considering the City's description of its self described "generous" notice to property owners, the Court must keep in mind that Property Owners were given less than 14 working days to seek out rebuttal to the City's individual parcel assessment. Each delay in receiving notice of (1) what the individual assessment was, and (2) the rationale upon which it was based critically impaired any meaningful opportunity for property owners to respond.

Notably, before the Superior Court below, the City claimed: “Copies of the Macaulay report were made available for public inspection and copying immediately after the City's received the report on May 10, 2011. CP 1348.” City Superior Court Brief at page 8, CP 2618. That assertion is completely missing in the City’s appeal brief. Below, the City cites to a self-serving conclusion in a Staff Report in support of this contention. On appeal, the omission of the prior City claim **must** be a concession that the City cannot credibly dispute or refute that all property owner requests for information were treated by the City as Public Records Request (RCW 42.56). Edgewood required that affected property owners take an extra and *non-statutorily sanctioned* step of traveling to Edgewood city office to request a copy of the McCauley Report and assessment role. And, once requested, Edgewood treated the information request as one made under Chapter 42.56 RCW (Public Records Act), and took no less than five days to respond. Despite prompt property owner requests for parcel-specific information, the City did not respond to some requests (including Owner Docken) until June 1, 2011 – **the day of** the final assessment role hearing. TR 65:18-66:12. And even once the Report was obtained, whether intentional or not – there were more rabbit holes to chase: The Maccauley report concedes that Report contains only “Summary data on each parcel within the proposed boundary is shown in the spreadsheet starting on page 11.” To get to the full story, instead, “More detailed property description information is contained in the appraisers' files and is available upon request.” CP 1465 copy attached. This is flawed due

process.

The City's record citation (CP 1452-1461) also lacks any support for the mandatory requirement that affected property owners receive notice of the anticipated individual assessment prior to the hearing. RCW 35.44.050 and 060 call out that "The total assessment thus ascertained against each separate lot, tract, parcel of land, or other property in the district shall be entered upon the assessment roll as the amount to be levied and assessed against each separate lot, tract, parcel of land, or other property". It is this assessment roll that was inaccessible to property owners for the full 15 days prior to hearing as the statute requires. The City is required to provide complete notice of information no later than fifteen days prior to the scheduled hearing date. RCW 35.44.090. Edgewood's extended information request process to release statutorily mandated property owner information eroded the required 15 day notice period that is required to be afforded to affected property owners. *Id.* The Owners were both prejudiced and deprived of any meaningful opportunity to object to LID assessments by the City's untimely and substantially meaningless information response.

The City responds by claiming "Appellants erroneously rely upon inapplicable statutory (RCW 35.43.130) and case (*Peoples Nat. Bank of Washington v. City of Anacortes*, 44 Wn. App. 262, 72 1 P.2d 1003 (1986)) authority governing the notice requirements for LID formation hearings. City Brief at 21. The City is correct that the *Peoples* Court ruled on the adequacy of notice for an LID *formation* hearing, but the City misunderstands the import

of the ruling. In *Peoples*, the Court declined to find the notice defective ***precisely*** because it ***was*** simply at the LID formation stage- The court ruled a ***different*** outcome would occur if the hearing purpose was “upon the validity of the assessment, which has not yet been determined or **the benefit to the property within the district**, which has yet to be determined.” The *Peoples* court acknowledged that “the parties will have an opportunity to challenge the validity of the assessment and the claimed benefit to the property in subsequent proceeding. The sole issue before the City Council was whether the district should be formed.” *Id* at 263 and footnote 3³

Here the hearing purpose was to address individual parcel-specific assessments; the defective notice rises to a constitutional defect which invokes the superior court’s inherent, or constitutional jurisdiction. *See Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005). An assessment role review proceeding under the superior court’s constitutional jurisdiction is a jurisdictional challenge. *Id.* Jurisdictional

³ The *Peoples* Court relied on Professor Trautman's article ASSESSMENTS IN WASHINGTON, 40 Wash. L. Rev. 100 (1965), which states in pertinent part:

" There is nothing in the constitution requiring that notice of a proposed improvement be given by resolution or otherwise. As a result, the court has been somewhat liberal in allowing for deviations from the statutory requirements as to notice and contents of a resolution. Substantial compliance, rather than exact compliance, is the test. **The purpose of the notice at this stage is not to accord a hearing upon the validity of the assessment, which has not yet been determined or the benefit to the property within the district, which has yet to be determined**, but to accord a hearing upon the limits of the proposed district and upon the question whether the district should be formed at all. Objections by property owners at this stage should be directed to those questions. A FAILURE TO RAISE ISSUES PERTINENT THERETO, AS TO SUFFICIENCY OF THE NOTICE, OR SUFFICIENCY OF THE CITY ENGINEER'S REPORT, AT THIS STAGE WILL CONSTITUTE A WAIVER. (Footnotes omitted. Italics ours.) ASSESSMENTS IN WASHINGTON, at 111-12.

challenges are not governed by RCW 35.44. *Id.* Notable, the City failed to directly rebut the Owners' jurisdictional challenges in its brief at all.

Again, the City does not refute that as of the day prior to the hearing, the City had not yet supplied parcel specific information to property owners who had requested this. See for example, enclosed City email response dated May 18, 2011, Docken Appendix 2, CP 1179-1181. **Not until June 1, 2011**, the very day of the Examiner's hearing did Mr. Docken receive the City response to his request for "parcel specific back up appraisal data" for his three properties. As to LID parcel 140 (per City Notice) (108 on city parcel specific info) tax parcel 0420094079, the information consists only of Pierce County Assessor online information. As the remaining two parcels (LID Parcel 131 (per City Notice) (110 on city parcel specific info) tax parcel 0420094080 and LID Parcel 133 (per City Notice) (109 on city parcel specific info) tax parcel 0420094023), the information consists of Pierce County Assessor online information and one additional page. TR 65:18-66:12. And see CP 656-658, 659-689, Docken Appendix 3 at CP 1182-1212. No narrative was included within the parcel specific information, and no explanation of what methodology was used or how it was applied to support the offered Special Benefits calculation. *Id.*

The purpose of the June 1, 2011 LID hearing is to allow property owner to present parcel specific objections. "The hearing on the assessment roll is the proper time for raising the questions whether

special benefits have been conferred and whether the amounts of individual assessments are correct.” *Assessments in Washington*, 40 Wash. L. Rev. 100, 110 (1965), at 123. The failure of the City to provide timely notice of and information related to parcel specific benefits prior to the LID hearing deprived the affected property Owners the opportunity to form meaningful objections. The City’s process was jurisdictionally flawed and incompatible with the statutory purpose of a Final Assessment Role hearing. RCW 35.44.070.

To further refute the claim of inadequate *statutory* notice, the City describes in its Brief the City’s June 1, 2011 LID hearing notice, and cites to CP 1452-1461. The City describes that it was actually more generous and timely than relevant statutes require. City Brief at 22. Yet the City fails to cite in the record any evidence of the list of property owners to whom the notices purportedly were actually sent. *Id.* Thus the City lacks evidence in the record that it complied with the mandatory notice provisions.

B. City Doesn’t Overcome that Flawed Publication Renders Critical City Ordinances Void.

Edgewood failed to meet required statutory process for publication of the ordinances. RCW 35A.13.190. The policy underpinning of RCW 35A.13.190 is to ensure affected citizens have proper **notice** of the contemplated action. Proper publication is a condition precedent to the effectiveness of an Ordinance. The City’s Brief repeats its argument that substantial compliance cures the failure to follow statutory requirements. Brief at 23. This language is “functionally identical to the statutory text and

easily satisfies state law”. But, on its face, the Ordinance states that it is to be “published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.” **However the City’s publication was flawed in that it did not include a statement that the full text of the ordinance will be mailed upon request.**⁴ That flaw did not go to the text or substance of the summary -- but rather in the City’s omitted offer to mail a full text of the ordinance upon request. **This flaw goes to notice.** The requirement to make the text of a summarized ordinance readily available is motivated by ensuring public access to the full content of an Ordinance. The City also cannot hide behind RCW 35A.21.010 as it attempts. The provision allows forgiveness in “Deficiencies in the form of an ordinance or resolution” if the following requirements are met “The legislative body of the code city followed the prescribed procedures, if any, for passage of such an ordinance or resolution, as provided in the law” which the City did not do. The City argues that flawed publication does not mean that the City’s assessments were made on a fundamentally wrong basis or that the City acted arbitrarily and capriciously in confirming the roll. *Abbenhaus*, 89 Wn.2d at 858-59. City Brief at 24. The City is wrong. Edgewood’s fatal flaws in the Ordinances’ publication renders the ordinances void and without effect. As a result, both the zoning scheme underpinning the assessment Special Benefit Study and Edgewood’s intended procedures for the LID hearing, appeals and delegation of authority to the Hearing Examiner pursuant to RCW 35.44 *et.*

⁴ RCW 35.22.288⁴ (first class cities) and RCW 35A.13.190 (code cities)

seq. are all invalid. Because Edgewood Ordinance 11-0361 (LID hearing and appeal process) and AB 11-0358, 0359, and 0360 (Comprehensive and Zoning Amendments) are void and without effect, the Councils relied on a fundamentally wrong basis or the City acted arbitrarily and capriciously in confirming the roll, which relied on these ineffective ordinances.

C. Edgewood Improper Delegation to Hearing Examiner Fatally Tainted the Process & Prejudiced Owners

1. City Delegation to Examiner was Incomplete and Prejudicial

Edgewood City Council Ordinance 11-0361 delegated its LID assessment hearing authority to the examiner, but restricted the Examiner's role to **only** "lower one or more assessments or to confirm the roll as prepared." The limited nature of the City's delegation to the HE as ***to relief*** also renders the LID hearing process flawed. The City argues that "the council's authority to designate a hearing officer to oversee the final assessment hearing for an LID is governed by statute". Brief at 25, citing to RCW 35.44.070. True, as far as it goes. But here, the City Council did **not** follow that statute which allow for the delegation. The City Ordinance delegated to the Examiner the authority **only** to "lower one or more assessments or to confirm the roll as prepared". See Ordinance 11-0361. CP 1444-1448 see also CP 1231-1235. There is no authority to deviate from this statutorily defined final assessment hearing process. While that same statute also allows for the legislature to create an administrative appeal process, there is ***no provision for curtailing*** the delegated officer's authority to act at the LID appeal hearing.

The City attempts to slide by this flaw by three failing arguments.

First the city cites to CP 1444, arguing “By its terms, Ordinance No.11 - 0361 authorized the Edgewood Hearing Examiner "to conduct the hearing as permitted by RCW 35.44.070". CP 1444. That page of the record is attached and bears witness that the City inappropriately cites to a **recital** – **not** the operative ordaining section of the Ordinance. Second, the City argues it is not required that the City “must explicitly recite verbatim the entire range of options at the officer' s disposal.” Brief at 26. Perhaps not, but here- the City did not **omit** the delegation scope – it explicitly called out the delegation scope, and in doing so improperly curtailed that scope in degradation of the statute. Third, nor can the hearing notice which *properly* stated the statutory scope of delegation, See City Brief at page 28 (“the acknowledgement was included in the City’s notice”) cure the defect; the hearing notice is not a council “ordinance,” which is the only means to delegate per RCW 35.44.070.

2. Examiner & Council Acted Arbitrarily & Capriciously in Denying Requested Continuance & Not Correcting Flawed Due Process

The shrunken scope of the examiner delegation was prejudicial. It allowed the Examiner to duck any ruling on the City’s flawed notice, timeliness, publication and process issues, claiming that he lacked authority to do so:

Neither the RCW nor Ordinance 11-0361 grants the Examiner authority to rule on the legalities of the establishment of the LID, nor on the notice and other procedures prior to the public hearing. ..Thus, the Examiner has no authority to continue the hearing.

HE Finding of Fact No 8. CP 57. In truth, the state statute which allows

the City Council to delegate the LID assessment hearing also sets the parameter of that delegation: to consider “all objections filed”. See RCW 35.44.070:

The committee or officer designated shall hold a hearing on the assessment roll **and consider all objections** filed following which the committee or officer shall make recommendations to such legislative authority which shall either adopt or reject the recommendations of the committee or officer.

Due to the improperly limited delegation, the LID process before the Examiner did **not** comply with the state statute and improperly robbed property owners of any relief to this large area of objections to the LID. When the flawed notice and publication objections were then dropped squarely in the lap of the City Council, the City Council educated its responsibility to consider and correct these numerous due process and notice issues, as the Transcript citations attest in Owners’ Opening brief. CC TR 46:25-47:9 CC TR 49:10-25. The failure of the Examiner and then the council to grant the property Owner’s continuance was especially arbitrary and capricious. Arbitrary and capricious action is willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. *Time Oil Co. v. City of Port Angeles*, 42 Wn. App. 473 , 489-80, 712 P.2d 311 (1 985), citing to *Abbenhaus*, 89 Wn.2d at 858-59.

Unlike *Time Oil* (where the continuance request was denied but found properly considered), here, the Owners did not have 18 months – or even 18 days to prepare for hearing.

At the May 5 hearing, the council indicated that its denial of the continuance was premised on a belief that Time Oil had already been given adequate time to prepare its case. *The original assessment, received by Time Oil in November 1979, differed from the final assessment, received by Time Oil in April 1981, by less than \$600*; thus, Time Oil had been on formal notice of the assessment amount for **almost 18 months**. The council understandably was motivated to move the LID process to a conclusion. It considered the circumstances surrounding Time Oil's request; ...The decision was not arbitrary and capricious

Id. Here, **neither** the Examiner nor the City Council considered the facts and circumstance which supported a continuance **at all**. The Examiner because he (incorrectly) believed he lacked authority to do so; the City Council simply failed to address the underlying facts surrounding the continuance request ***in any way at all***, despite that the issue was raised as an appeal issue. By this failure, the City acted arbitrarily and capriciously and should be reversed.

V. CITY OF EDGEWOOD LID PROCESS IS PROCEDURALLY FLAWED

A. City Erred By Allowing City Testimony in Record After the Hearing Record was Closed

The City protests that its post hearing supplemental McCauley testimony was not “evidence” and that the June 13, 2011, supplemental response from Macaulay & Associates cites exclusively to information already included in the record. CP 1077-1088. Yet Macaulay was the city's “expert” witness – testifying as to valuation. The City then ***admits*** it relied on the new McCauley information to adjust valuations. Brief at 37. This argument is a classic example of the slippery semantics the property

owners were required to deal with throughout the hearing processes. The Transcript clearly states the ruling of the Examiner:

14 MS. ARCHER: I just want to -- you
15 **made it clear that if our written responses are not to**
16 **provide any additional exhibits. I assume that same rule**
17 **applies to the City's reply?**
18 MR. CAUSSEAUX: Yes, the record is
19 **closed for submissions.**
20 **This is only for filing of the final argument.**
21 MR. TANAKA: Should that be -- should
22 people include any summary or closing argument that want
23 to in that as well, just so --
24 MR. CAUSSEAUX: Yes, yes, that's what
25 the purpose of it is.
1 **Instead of having to do it orally now, we'll have**
2 **them write it in, so it will be in the nature of closing**
3 **arguments. There won't be any new evidence**
4 **submitted or**
4 **made part of the record.** HE TR 148:6- 149:4.
Therefore, inclusion of the Macaulay letter on the record was

inappropriate and impermissible, and the Examiner erred by allowing it, and the Council erred not correcting this. The Examiner also made clear that any relief granted to the Dockens would apply globally. Absent this assurance by the Examiner, the Owners who joined in the Docken representation and arguments would gladly have identified themselves at hearing and thus been covered by the Docken Motion to Strike.

4 MR. CAUSSEAUX: -- Mr. Docken. I'm
5 just going to -- you know, I'll receive the documents in
6 as far as his protest is concerned, but **I also indicated**
7 **at the start of the hearing that anyone who came through,**
8 **if someone came and gave testimony or raised issues that**
9 **would apply to everybody else, no one else needed to**
10 **come**
10 **forward to say it, so I'm going to let you go ahead and**
11 **present that on behalf of Mr. Docken and whatever is**
12 **relevant in there to other protests, we will consider**
13 **that also.** HE TR 71:4013.

The City Council erred in not applying his ruling on the Docken Motion to Strike for the benefit of other parcels.

B. Flawed City Council Action Renders Ordinance Void.

The City dismisses Owners' arguments regarding the Edgewood's Council's failure to follow its own rules of procedure as harping on a "harmless" technical error; that Owners seek to "elevate form over substance." See City's brief, page 48. In its quick effort to dismiss these arguments, however, the City fails to address the substantive crux of the problem: that the Council failed to lawfully pass Ordinance AB 11-0366 because it substantively and procedurally failed to secure four affirmative votes as required by law.

In reading the transcript of the Council hearing, the only fair conclusion one can make is that Councilmember Eidinger did not think the City had followed proper or fair procedure as regards the final assessment. That is why he voted "no" in the first instance. Nothing in the transcript evidences that he changed his opinion on this point. (See, eg, July 19, 2011 Hearing Transcript at page 54, line 8-9 "...if I can't look at fairness, then I have to approve it, is that what you're saying to me." See also, page 59, line 22 "I can see the handwriting on the wall." And page 60, lines 4-6 "...but I can see where we're going to end up by next week anyway, so I guess there's no purpose to delay that any longer.")

Casting a vote on the basis of what someone *speculates* might happen a week hence is arbitrary and capricious, and therefore not a

proper basis for counting Councilmember Eidinger's vote a being clearly in the affirmative. In addressing a slightly different issue but also related to the LID process, the City's attorney concedes that failure of the city to follow its own processes is "problematic."

13 MS. NERAAS: And I think one thing you
14 have to be aware of is, you know, **the council sets forth**
15 **this process, including the appeal process and the**
16 **days.**
17 **And so you can't allow -- you know, you can't deviate**
18 **from that process** without letting others know because if
19 somebody -- if you said, okay, now they have a second
20 chance to present more information, others that didn't
21 appeal to you could say, if I had known I had more time,
22 I would have, as well. **So that is problematic.**
23 **So it really is the process that the council**
24 **established, and so now it would be appropriate for**
25 **you**
1 **to consider the record and make a decision on the**
2 **record.**
3 **And to open it up a little bit or to allow one property**
4 **owner some more time would not be fair and would**
5 **be**
6 **problematic. CC TR 54:13-55:2.**

Moreover, the action of casting a vote based on speculation as to how another might vote it is tantamount to the Edgewood Council having given Mayor Hogan the ability to cast an illegal proxy vote. The record is devoid of any evidence of an intent to act to suspend the Council's rules of procedure rules to this extreme degree.

It is a fundamental rule of parliamentary law that the right to vote is limited to those members actually present at the time a vote is taken at a legal meeting. State law, while being silent as to proxy voting by council members, clearly does requires city council actions be taken openly and

their business be conducted openly. Chapter 42.30 RCW.

When specifically asked about proxy voting by a school board member, Washington's Attorney General, in AGO 51-53 No. 283, concluded that proxy voting by a school district board, which board is subject to open meetings requirements, is not allowed. That opinion, and in particular its analysis, parallels the parliamentary guidance in Roberts Rules of Order. *Robert's Rules of Order*, Newly Revised (10th ed., 2000) states at §45:

It is a fundamental principle of parliamentary law that the right to vote is limited to members of an organization who are actually present at the time the vote is taken in a legal meeting . . . Exceptions to this rule must be expressly stated in the bylaws. Such possible exceptions include . . . (b) proxy voting.

* * * * *

Proxy voting is not permitted in ordinary deliberative assemblies unless the laws of the state in which the society is incorporated require it, or the charter or bylaws of the organization provide for it. Ordinarily it should neither be allowed nor required, *because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferrable.* (italics added)

The Edgewood Council's rules clearly do not permit proxy voting. In fact, the rules require the in-person attendance of council members except on "rare" occasions when participation may be by teleconference if strict procedures are followed. See, City of Edgewood Council Rules of Procedure, Rule 4.3. There is no evidence that Mayor Hogan participated via teleconference.

Finally, contrary to the City's characterization, Owners point to Councilmember Eidinger's comments **not** for purposes interpreting the

intent of Ordinance No AB 11-0366. The Owners do not dispute that Edgewood intends the ordinance to establish a lien against their property. What the City fails to appreciate is that Councilmember Eidinger's comments are properly considered by the Court in this appeal because they are evidence of the ***substantive and procedural invalidity*** of the ordinance itself. For this reason, cases cited by the City are inapposite.

Where legislation seeks to create a lien against the property, it is the City's burden to show the propriety of each and every step taken in such lien's establishment. *City of Seattle v. Doran*, 5 Wash. 482, 32 P.2d 105 (1893). The City cannot meet this burden because Councilmember Eidinger's comments, as well as the entirety of the transcript of the July 19, 2011 Special Meeting, are evidence that the second vote was procedurally and substantively improper.

The original vote on Ordinance AB 11-0366 failed for lack of four affirmative votes. RCW 35A.13.170; RCW 35A.12.120. Therefore it died. The reasons for Councilmember Eidinger's negative vote – concern for the propriety (fairness) of the City's actions -- persisted. In the midst of this, members of the Edgewood City Council hastily sought to revive the ordinance, but in doing so failed to follow its own procedures. It is not a minor procedural irregularity for a vote to be cast on an arbitrary and capricious basis, or for City to count as an affirmative vote one that is the equivalent of an illegally cast proxy. The Owners suffer substantial detriment because of the Council's improper actions in endeavoring to

affirm the final assessment roll. RCW 35A.21.010(4) As a matter of law, the City fails to meet its burden to show that Ordinance No. AB 11-0366 was validly enacted. What actually transpired on July 19, 2011 was an illegal revote by the Edgewood City Council. The City did not legally enact ordinance AB 11-0366, and any assessment based thereon is invalid. To prevent further harm to Petitioners and all LID property owners, this court must grant this appeal and declare the ordinance invalid and the assessment roll void.

C. City Council Did Commit Reversible Due Process Error By Failing to Conform to City's adopted LID Process Set Forth in Ordinance 11-0361

Instead of a two week process, where council members could have thoughtfully considered the appeal issues, the Edgewood Council raced to hearing in **less than 2 working days** after the Owners' appeals were filed. The City Brief at 41 argues that "due process considerations are satisfied if the City Council has available for its consideration the substance of the hearing." *West Slope Cmty. Council v. City of Tacoma*, 18 Wn. App. 328, 338, 569 P .2d. 1183 (1977) (emphasis added). ***Yet – the record lacks such evidence.*** The City cites to CP 2269 to attest that: "The administrative record and copies of the appeals were provided to the Council". Brief at 40. But the page cited does **not** support the contention that the Council considered the administrative record at all. Instead it is page 1 of Ordinance 11-0366, stating: "ten appeals of the examiner's decision were received. The Council has considered each appeal and the

assessments roll of the Local Improvement District No. 1. The council adopts the findings of Fact and Conclusion of Law of the Hearing Examiner....” See CP 1311. Copy attached. There is **no** mention of council consideration of the administrative hearing record, so as to meet that minimal standard of *West Slope Cmty. Council v. City of Tacoma*, as the city contends. This Court should find that the rushed process resulted in the Council’s obvious lack of familiarity with any of the appeal materials or statutory LID procedures deprived the property owners of meaningful due process.

VI. EDGEWOOD SPECIAL BENEFIT ASSESSMENT REPORT DOES NOT SUPPORT CLAIMED VALUATIONS NOR SURVIVE CHALLENGES

A. City Failed to Show Report Complies with Professional Appraisal Industry Standards Highest & Best Use.

The fundamental starting point for evaluation of the testimony of the City’s expert, and its only expert, is clear. “An expert’s opinion on the market value of real estate must be based upon those legal principles which define the factors which the expert can or cannot consider in reaching his expert opinion.” *Doolittle v. Everett*, 114 Wn.2d 88, 104, 786 P.2d 253 (1990). Uniform Standards of Professional Appraisal Practice (“USPAP”) 2011 Standards Rule⁵ 6-8(n) states “The mass appraisal report **must** reference case law, statute, or public policy that describes highest and best use requirements.” *Cmt* [emphasis provided]. “Must” denotes a

⁵ “This is a mass appraisal report prepared in accordance with requirements set forth under “Standard 6: Mass Appraisal, Development and Reporting” of the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute...”

mandatory citation. The City's Report lacks citation to any such case law, statute or public policy.

No timeframe quantifies highest and best use. The City Report in fact misstates the definition of highest and best use by materially omitting the timeframe component.⁶ The Washington State definition of highest and best use of land takes into account a *reasonable timeframe*, in consideration of "reasonably probable" use of the land. *Doolittle v. City of Everett*, 114 Wash. 2d 88, 105, 786 P.2d 253, 262 (1990) ("An owner...is assessed for LID improvements based upon potential highest and best use....when the governmental unit assesses its LID charges on a theoretical, compared to existing use, it is forcing the owner to pay on the basis of what an expert says it should do with his property. These facts **must** be considered in an assessment proceeding in application of the principle that future use to which property is reasonably adapted within a reasonably foreseeable time may be considered"). The Study fails to comply with industry standards *and* the omission in this case relates directly to a defective result.

Failure to Include Supporting rationale. City Brief at 61 claims that "the use of a mass appraisal special benefit analysis rather than a parcel specific approach is well supported. (CP 1465-66, 1537-8)." Yet the City points to nowhere in the record that this narrative rationale exists. Noteworthy, the City's characterization on appeal is reduced from

⁶ The City Report, at page 53, cites a dictionary for the highest and best use definition.

its initial position before the Superior Court, where City concedes that “The appraiser's reasoning in support of the highest and best use opinion **must be provided in the depth and detail** required by its significance of the appraisal,” citing to Uniform Standards of Professional Appraisal Practice (USPAP) Standard Rule 6-8 (n). City Brief below at 46. CP 2156.

Failure to Discount. Mass appraisals have a corollary rule to USPAP 1-2(e)(iv) in Standard Rules 6, with which this appraisal is purported to comply. USPAP 6-2(f)⁷. The Macaulay Report explicitly states that it *assumes* property to be unencumbered and owned fee simple for its special benefit analysis. The Report then also proposes special assessments for each parcel, making the special assessments known. Envisioning a given parcel heavily encumbered for twenty years by the proposed and substantial LID assessments as compared to the same parcel unencumbered will lead to a pricing variance for the next twenty years (reasonable timeframe), which Macaulay neglects to take into account.

Hypotheticals Not Disclosed. USPAP Standards Rule 1-2(g) states: “In developing a real property appraisal, an appraiser must identify any hypothetical conditions necessary in the assignment.” Cmt.

⁷ USPAP 1-2(e)(iv) states that “In developing a real property appraisal, an appraiser must identify the characteristics of the property that are *relevant to the type and definition of value and intended use of the appraisal, including...any known easements, restrictions, encumbrances, leases, reservations, covenants, declarations, **special assessments**, ordinances, or other items of a similar nature*

to USPAP 1-2(g); Standards Rule 6-2(i) states: A hypothetical condition may be used in assignment only if use of the condition is *clearly required for...purposes of reasonable analysis, or purposes of a comparison; use of the hypothetical condition results in a credible analysis; and the appraiser complies with* [disclosure requirements]. The Special Benefits Report omits a material hypothetical condition: Substantial lien and tax disadvantage for the next twenty years that effectively adds hundreds of thousands of dollars to LID property owner's carrying charges.

Reliance on Trainee. Under USPAP, those with a hand in completing the appraisal are required to be disclosed:

When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser(s) is responsible for the decision to rely on their work...The names of individuals providing significant appraisal, appraisal review, or appraisal consulting assistance who do not sign the certification must be stated in the certification. It is not required that the description of their assistance be contained in the certification, **but disclosure of their assistance is required** in accordance with [USPAP Standards for Mass Appraisals Rule 6-8(j)].

USPAP 6-9 Cmt. The Certification of the City's Study was signed by Robert Macaulay and Kelly Hao. *Study* at 86. CP 1560. The Certification states: "No one provided significant assistance to the persons signing this certification." *Id.* Any mention of Ashley Zacharia, an "**appraiser trainee**", is notably absent, rendering the Report non-compliant with professional standards of conduct. To the extent that the City Consultant "did not understand" his own chart that he

certified, among other things, “to be true and correct” “to [his] best belief,” and failed to disclose someone providing significant assistance, this appraisal is non-compliant with the USPAP professional code of conduct. *Report* at 85. Cp 1559. The court may disregard the opinion of an expert if he has proceeded on a fundamentally wrong basis in arriving at that opinion. *Doolittle v. Everett*, 114 Wn.2d 88, 104, at 106, 786 P.2d 253 (1990), *In re Local Imp. 6097*, 52 Wn.2d 330, 336, 324 P.2d 1078. This Court should so disregard the Edgewood Report, based on these clear flaws.

B. Information Necessary to Support City Valuations is NOT in the LID Record.

The City produced no argument to overcome Owners’ analysis that information necessary to support city valuations is **not** in the LID record. First, the City’s Report does **not** contain the information which purportedly supports the valuations; instead this information is contained in undisclosed “files” and “spreadsheets” which are **not** part of the LID hearing record and **cannot** be considered by the City Council (or any reviewing Court). Second, when the burden shifts to the City to prove that the properties were specially benefited, competent evidence was not presented in the record. “That proof must rest upon **competent evidence**.. *Bellevue Assocs. v. Bellevue*, 108 Wn.2d 671, 675, 741 P.2d 993 (1987). Here, the City cannot prove the challenged valuation, because the City’s consultant testified that the supporting “evidence” was not in the Report but rather in the Appraisers’ “files” and “spreadsheets”.

Here, the Court is **denied** the proof of the valuation as it is **not** in the record which this Court may consider. The Court should reject the City valuation and grant the appeal.

C. City Report Fails to Describe Accepted Assessment Methodology

RCW **Error! Reference source not found.** authorizes "any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed." RCW 35.44.047 however requires that an alternative method must more fairly reflect the special benefits; it is therefore incumbent upon the City to make such a finding. But here, the City presented no evidence that the City made such a determination to show the Macaulay Report methodology "more fairly reflects the special benefits". The City argues at Brief 65 that, "RCW 35.44.070 itself contains no requirement that the City produce evidence supporting its chosen assessment method". However, the courts do. "We do conclude, however, that *some* evidence must appear in the record from which a reviewing court can conclude that this determination has been made". *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 842-43 , 670 P.2d 675 (1983). This is missing. The City tries to argue that "the Macaulay report contains a lengthy explanation of the mass appraisal methodology and an explanation of why it is particularly appropriate for the City of Edgewood' s sewer LID." Brief at 43, citing to CP 1526. But see copy attached; no such "lengthy explanation" appears.

Next the City claims the missing authorization of the alternative assessment methodology is contained in CP 1311 – but this is the last ordinance which **confirmed** the LID assessment roll. Instead the statute requires that if an alternative assessment formula will be used, the alternative must be authorized in the earlier ordinance which ***authorizes the planned improvement:***

Whenever the nature of the improvement is such that the special benefits conferred on the property are not fairly reflected by the use of the aforesaid termini and zone method, **the ordinance ordering the improvement may provide that the assessment shall be made against the property of the district in accordance with the special benefits it will derive from the improvement without regard to the zone and termini method herein provided.**

Time Oil Co. v. City of Port Angeles, 42 Wn. App. 473 , 489-80, 712 P.2d 311 (1985). See also: If statutory formula does not fairly reflect the proportionate special benefits, then ***the authorizing ordinance*** may specify that the statutory formula will not be followed and an appropriate special benefit formula will be used⁸. See *Sterling Realty Co. v. Bellevue*, 68 Wn.2d 760, 766, 415 P.2d 627 (1966). No such required finding was authorized by **2008** City Council ordinance which authorized the sewer improvement. The City reliance on the after the fact ordinance which confirmed the LID assessments is insufficient and error.

D. Owners' Assessed Valuation Impermissibly Included General Benefits

⁸ RCW 35.51.030(2) permits the classification of properties according to specified uses and elements, "but in no case may a special assessment exceed the special benefit to a particular property."

Edgewood's consultant testified that the costs included in the LID sewer "special benefits" assessed to LID property owners, including Owners' herein included costs of "over-sizing for future use". CP 2236-7. HE TR 127:4-19, HE TR 127:20-25. By this statement, the City **admits** that costs **in excess** of the special benefits to each LID property owner were improperly included in the LID amount. The City's brief unbelievably repeats and cavalierly expands upon this admission at Brief 60 & 61.

- As the City's engineering consultant explained, because the LID No. 1 sewer project is the first component of the City's sewer system, it would necessarily be required to foresee and accommodate future connections by other landowners outside the LID. June 1, 2011 Hearing Transcript at 127.
- In any event, the oversizing issue **is simply a practical reality** that the first component of a larger utility system must often absorb a comparatively higher percentage of the total system costs in relation to components that may be connected or added in the future. *City Brief* at 61.

A property must be specifically benefited by improvements, **as distinguished from improvements to the entire district.** *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993)

It is the basic principle and the very life of the doctrine of special assessments that there can be no special assessment to pay for a thing which has conferred no special benefit upon the property assessed. To assess property for a thing which did not benefit it would be *pro tanto* the taking of private property for a public use without compensation, hence unconstitutional. *In re Jones*, 52 Wn.2d 143, 324

P.2d 259 (1958), *quoting In re Shilshole Ave.*, 85 Wn. 522, 537, 148 P. 781 (1915). The record plainly shows that Edgewood improperly chose to assess *general* benefits to real estate owners of LID No. 1, requiring that sub set of the City to pay the costs of sewer capacity above and beyond the special benefit actually accruing to each individual parcel. The City consultant's sloppy and or abject lack of valuation methodology documentation as applied to each individual parcel allowed this cost shifting to occur. And, because the City's testimony does not include the dollar amount of the improperly included general benefits, this Court cannot cure this improper inclusion, and instead must remand to the city for the needed adjustments to the assessment rolls.

VII. CONCLUSION

On a global basis, the City's LID process was fatally flawed by the numerous City procedural and timing missteps which robbed Owners of meaningful input. The City's Special Valuation Study methodology was flawed. The Owners presented testimony and evidence on the lack of Special Benefits which transferred the burden of proof back onto Edgewood to establish the validity of the special benefits assessments, which Edgewood did not do. The combined effect of the errors noted mean that Edgewood's valuation study must be disregarded. Edgewood did not overcome the testimony of the Owners' expert who testified as to the lack of special benefits and the errors and critical omissions of the City Consultant. The proposed adoption of the confirmation ordinance is

without factual or legal foundation and therefore is arbitrary and capricious. Further, an ordinance of a non-charter code city is **not** validly enacted when, after failing to pass on an initial vote, a revote is taken on second motion that is made by a councilmember from the failing side and where no motion for reconsideration of the failing motion made.

Ordinance No. AB 11-0366 was not properly enacted as a matter of law and Edgewood City Council Rules of Procedure due to procedural and substantive defects. Therefore, the assessment ordinance is invalid.

Owners also adopt by reference all issues and analysis raised by all other Respondents in this consolidated LID appeal. Pursuant to RCW 35.44.200, this Court should grant this Appeal of Assessment Roll for City of Edgewood LID No 1 purported to be adopted pursuant to Edgewood Ordinance AB 11-0366. The Court should apply the parcel-specific relief and or remand for a reassessment proceeding which complies with applicable statutes, to include an assessment hearing process that includes proper notice processes and sufficient timeframes so that property owners may meaningfully review, understand and comment on the LID assessments. On appeal, this Court should conclude that relief extends to that full pool of LID property owners.

RESPECTFULLY SUBMITTED this 31 day of July 2012.

GOODSTEIN LAW GROUP PLLC

By: 

Carolyn A. Lake, WSBA #13980
Attorneys for Owners/Respondents
Docken.

000801

BEFORE THE EDGEWOOD HEARING EXAMINER

LID ASSESSMENT NO. 1

DECLARATION OF
John Trueman, MAI, SRA

1. I John Trueman, MAI, SRA am principle of TRUEMAN APPRAISAL COMPANY.
2. A copy of my resume is attached.
3. As discussed with Carolyn Lake Legal Counsel for various affected property owners I reviewed the Goodstein Law Group Letter dated June 1, 2011.
4. I also have done a limited review of the above referenced LID assessments for the Edgewood sewer project.
5. In particular, I have reviewed an appraisal prepared for the City of Edgewood by Macaulay & Associates, LTD. as of May 10, 2011.
6. The appraisal numbers 152 pages and has significant discussion as to area statistics, current zoning, numerous sales of improved and unimproved properties and concludes with ranges of value of special benefits per square foot ranging from \$0.25 to \$4.25 and recommended assessments per square foot of \$0.19 to \$3.15 per square foot.
7. Total estimated market value without the LID is estimated at \$75,905,000, total estimated value with the LID is estimated at \$104,723,000, and the estimated total value of Special Benefits is estimated at \$28,818,000.
8. What the report does not show is the calculations illustrating how these estimates were prepared utilizing sales in a before and after analysis.

000802


DECL OF JOHN TRUEMAN -1-
110601 dec trueman.docGOODSTEIN
LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
Fax (253) 779-4411
Tel (253) 779-4000

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- 1 9. Additional information provided utilizes Pierce County Assessors assessment records,
2 which may or may not have a relationship to market value in the before and after
3 analysis.
- 4 10. What is needed is an actual determination, based on a before and after analysis, to
5 establish what the property was worth prior to the LID project to measure the actual
6 special benefit and how it compares to the LID assessment.
- 7 11. What is missing in the Report is any consideration of the physical condition, locality
8 and environment of the property involved, and the character of any improvements.
- 9 12. Thus there is no way to reasonably conclude the sewer an improvement is a benefit;
10 and or the amount of the accrual special benefit, or that any assessment is equal or
11 ratable to an assessment upon other property similarly situated; and that the
12 assessment is fair.
- 13 13. The May 10, 2011 Report does not include appraisal evidence showing how and the
14 amount to which the properties would be benefited by the improvement as
15 described by the City.

16 I declare under penalty of perjury under the laws of the State of Washington that
17 the foregoing is true and correct to the best of my knowledge and belief.

18 Dated this 1st day of June, 2011 at Tacoma, Washington.

19 
20 John Trueman,

BEFORE THE EDGEWOOD HEARING EXAMINER

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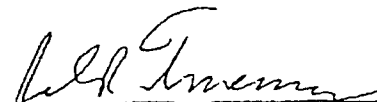
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- 1 9. Additional information provided utilizes Pierce County Assessors assessment records,
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18 Dated this 1st day of June, 2011 at Tacoma, Washington.

19 
20 John Trueman,

**SUMMARY OF SPECIAL BENEFIT STUDY AND ASSUMPTIONS FORMING THE
BASIS OF RECOMMENDED FINAL ASSESSMENTS - CITY OF EDGEWOOD
MERIDIAN AVENUE SEWER PROJECT (LID NUMBER ONE)**

Introduction

Utilizing limited assignment/mass appraisal techniques, this special benefit study involves appraisal of the market value of the fee simple interest in each subject parcel both without the local improvement district (LID) and with the local improvement district project assumed completed. The difference in market value, if any, without and with the LID is the special benefit accruing due to the project. The terms "without" and "with" are used instead of "before" and "after" to remove the inference of a time interval between the two value estimates. The meaning of the two sets of terms is identical.

Client and Intended Users

The client is Mr. Zach Lell, City Attorney. Intended users of this report are the City Attorney, the City of Edgewood, its duly appointed representatives and the owners of property within the LID boundary.

Purpose and Intended Use of the Study

The purpose and intent of this study is to estimate recommended final assessments to assist the City of Edgewood in allocating appropriate, proportionate assessments to each assessable tax parcel within the boundaries of the project which is specially benefitted. To accomplish this, estimates of market value of the fee simple interest in each of the parcels within the LID boundary, based on respective highest and best use, are made, both without and with completion of the project as of the date of this special benefit study.

Exposure Period

An exposure period is the estimated length of time the property interest being appraised has been offered on the market prior to a hypothetical sale at market value as of the effective appraisal date. Based on review of comparable sales and discussions with market participants, exposure period for representative parcels within the LID boundary is estimated at 9 to 12 months.

Washington State Definition of Market Value

"Fair market value" is the amount in cash which a well-informed buyer willing, but not obliged to buy the property, would pay, and which a well-informed seller willing, but not obligated to sell it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.

(Washington State Department of Transportation Right-of-Way Manual, March, 2002).

Highest and Best Use

Highest and best use is the most fundamental premise upon which estimations of market value are based. According to "The Appraisal of Real Estate" (Thirteenth Edition, 2008), highest and best use is defined as:

... "The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."

Highest and best use analysis is a highly relevant consideration in the appraisal process. This analysis forms the basis upon which property is appraised, whether it is vacant land or land plus existing improvements. To this end, it is necessary to do two tests: 1) highest and best use of land as though vacant, and 2) highest and best use of the property as improved.

The primary reason for estimating the highest and best use of land as vacant is to estimate land value. If there is an existing improvement on the site, the land is viewed as though vacant. A conclusion is then reached as to what use creates the highest residual to the land or the highest land value. It is then possible to identify comparable sales of vacant land.

Highest and best use of property as improved considers the existing improvements and estimates whether they represent the maximally productive use or create the highest market value. If not, a decision must be made as to whether the improvements should be expanded, renovated, converted or razed to make way for that use which produces the highest return to an investor.

Market sale prices often indicate that an increase in the value of real property within the LID boundary occurs as a result of a proposed project. This anticipatory increment in value is called project enhancement and, as in eminent domain procedures, is not included in the estimate of value without, or before, the LID project. The market value estimate with the LID project assumed completed within a reasonable time recognizes changes in highest and best use and value resulting from the project.

Interim Use and Interim Value

The use of a site or improved property during the period of transition from existing to more intensive highest and best use is called an interim use. Interim uses are current highest and best uses that the market indicates will change in a relatively short time. Farms, parking lots, old buildings, and temporary buildings may be interim uses. Interim value, or contributory value, is created when old buildings or other uses produce gross revenues which exceed reasonable operating expenses. In the case of some of the subject parcels in the LID area, contributory value of existing improvements (such as old single family residences) is nominal. The discussion of interim use on page 292 of The Appraisal of Real Estate, 13th Edition, states that, "...the value of such improved properties may be less than the value of their sites as though vacant when demolition costs are considered. The value of these sites is based entirely on their potential highest and best uses."

Anticipatory Use and Market Value

In some instances, highest and best use of a parcel of land or an improved property may be anticipatory investment. Anticipatory highest and best use of unimproved land would be to remain vacant until development is justified by market demand, which occurs frequently when real estate markets are oversupplied. For many parcels, however, achieving the highest and best use requires some change or improvement which may be provided by the LID project.

Within this analysis, anticipatory use reflects the current market's anticipation of intensity of use as measured by buyers and sellers in the marketplace both without and with the LID project. Market value for an anticipatory use is not an estimate of projected future value, but reflects the current market for real estate based on its highest and best use. Anticipatory use resulting in project enhancement is not recognized in the valuation of real estate under the "without LID" premise.

Definition and Discussion of Special Benefit

A special benefit is defined as a specific, measurable increase in value of certain real property in excess of enhancement to the general area (and benefitting the public at large) due to a public improvement project. It is measured as the difference, occurring by reason of the LID project, between the market value of each parcel studied, without the LID project, and market value of the same parcel with the LID project completed and as of the same time frame. For this analysis, the date of valuation is May 10, 2011.

Enabling legislation providing authority to levy assessments by an LID is statutory in Washington State. All assessments must meet two criteria: (1) the amount of an assessment on a particular parcel may not materially

exceed the special benefit to that parcel and (2) all assessments within the district must be fair and in rough proportion to all other assessments.

Special benefit accrues to affected properties due to the sewer infrastructure project by enhancing the neighborhood's reputation, aesthetic appeal and character, and creating a more desirable location for residential/commercial property owners and tenants. In addition to removing the costs and risk associated with on-site septic system failures, more intensive land use and development is possible with the project completed. Individual properties within the LID boundary also specially benefit from the project by greatly enhanced neighborhood reputation, expanded potential for economic growth and improved their competitive position in the surrounding market.

Improved parcels with additional land available for future subdivision (i.e., excess land) receive greater special benefit due to the project than those improved with structures (residential or commercial) which cannot be further subdivided. Significant special benefit also accrues to unimproved property, for which development density and intensity of use are increased to varying degrees with sewer service. For parcels with existing septic systems, available information obtained from the Tacoma/Pierce County Public Health Department was considered in the analysis.

Additionally, sewer infrastructure provides for higher water quality and infiltration instead of increased runoff, facilitating aquifer recharge and protection of groundwater resources. Typically, special benefit to property is reflected in the underlying land value. As the result of a project like this one, the market will pay a higher price for land; in this instance, probable increases in land value are primarily due to the aforementioned factors.

Final Special Benefit/Proportionate Assessment Study Methodology

This is a mass appraisal report prepared in accordance with requirements set forth under "Standard 6: Mass Appraisal, Development and Reporting" of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute and, as such, it utilizes limited appraisal valuation techniques. Separate market value estimates are made for each parcel within the LID boundary. The first estimate is of market value without the project and the second is with the project assumed completed as of the same time frame. The increase in value, if any, is the special benefit accruing to that parcel due to the project.

In order to estimate the costs which a typical property owner/developer/investor would incur when developing or redeveloping property in the absence of the project, information obtained from comparable sales, planning departments in various cities and knowledgeable local professionals was reviewed. Recent sales of comparable commercial, multi-family and single family residential land, together with local commercial and apartment lease rates, were researched. Supply and demand information, as well as vacancy and absorption rates pertaining to the various local real estate markets, was considered. Also, the developers of projects proposed in the greater subject vicinity were interviewed to obtain (when possible) perspectives on the LID project and its influence on property values.

Dividing the total recommended final assessment by the total estimated special benefit for a project yields a cost/benefit ratio which, in order for an LID project to be feasible, is typically a number less than one. Multiplying the individual special benefit amounts for the affected parcels by this constant ratio results in recommended proportionate assessments to each parcel.

The estimated total project cost is \$21,238,268, of which 100% is to be financed by the LID. The total estimated special benefit to affected property is \$28,818,000. Dividing the total project cost by the total estimated special benefit yields a cost/benefit ratio of 74±%. In other words, each parcel receives one dollar in special benefit for each \$0.74± of LID assessment. The spreadsheet detailing significant facts and figures for the affected parcels (listed by map number, one or more of which may comprise a parcel) is located near the beginning of this report. The aggregate special benefit, total project cost and assessment/benefit ratio presented above result from analysis and compilation of the data in the spreadsheet.

Definition of Local Improvement District

An LID is a defined geographical area with a specific improvement of a public nature which provides a special benefit to the real property within its boundaries. The increase in market value of each ownership provides for a portion of the cost of improvements to be paid by the property owners of the benefitted property over a period of time, usually 10 to 20 years.

LID Boundary

The LID boundary was delineated as a result of a citizen group of property owners, with the presentation of a petition to the City of Edgewood. Numerous property owners contributed funds to initiate the process. Due to the poor soils in the Edgewood area and the currently widespread use of septic systems, development within the city has stagnated. The sanitary sewer LID increases potential economic activity within the city, spurring development along Meridian Avenue. As an example, there are numerous restaurants in the surrounding cities

of Milton, Sumner and Puyallup, where sewer service is available, which is evidence that there is demand in the area for this type of retail use. Because sanitary sewer service is not available in Edgewood, there are currently no restaurants.

Date of Valuation

The effective date of the applicable land use regulations and valuation analysis utilized in this report is May 10, 2011.

Purpose of the Analysis

The purpose of this study is to provide estimates of special benefit and recommended final assessments to all assessable parcels resulting from the City of Edgewood project as described herein; boundaries of the local improvement district are as depicted on the exhibits contained in this report.

Use of the Study

This study is intended for use by the client and their authorized representatives for internal purposes. It is a mass appraisal report prepared in accordance with the requirements set forth under "Standard 6: Mass Appraisal, Development and Reporting" of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute and, as such, utilizes limited appraisal valuation techniques.

Primary Phases of the Assignment

Macanlay and Associates, Ltd. was requested by the client to perform the following tasks:

1. Estimate special benefit and recommend final assessments to each assessable parcel.
2. Prepare a final assessment roll including map number, ownership, tax parcel number, site address, land area, brief improvements description (if any), zoning, probable market value (land and improvements contribution) without the LID, probable market value with the LID, estimated special benefit and recommended final assessment for each parcel within the LID boundary.
3. Prepare a final special benefit/proportionate assessment study report summarizing pertinent findings.

Significant Factors and Extraordinary Assumptions Utilized in the Study

An extraordinary assumption is defined as that which, if found to be false, could alter the opinion of market value. It presumes as fact otherwise uncertain information about the legal, physical or economic characteristics of the subject properties. Significant factors and extraordinary assumptions include:

1. The recently adopted changes in land use regulations are considered in the analysis to be the land use designations in the "with LID" valuation estimates contained in this report. Maps and other descriptive data contained in the City of Edgewood Municipal Code are incorporated herein by reference and considered in the valuation analysis.
2. The recently enacted zoning changes could not be implemented without the availability of sanitary sewer service to the subject area.
3. It is assumed for purposes of this analysis that all proposed project improvements described herein will be completed within a reasonable timeframe.
4. A road improvement project by the Washington State Department of Transportation to widen Meridian Avenue from a 3-lane road to a 5-lane system and add a traffic signal at the intersection of Meridian Avenue and 16th Street is fully funded and has been put out for bids. Construction is expected to begin by the end of 2011. It is assumed that the project, as designed, will be constructed as planned within a reasonable period of time.
5. Development of all parcels is subject to the City of Edgewood Municipal Code and the City of Edgewood Comprehensive Plan requirements and other applicable land use regulations.
6. Consideration is given to location, zoning, highest and best use and physical characteristics of the subject parcels and their relationship to the LID project.
7. Public improvements and the time required to obtain development permits for each parcel without and with the LID project are considered.
8. An investigation was made of the economic use and outlook, probable land use, relative location and intensity of use for each parcel. Comparative analysis is made between the base study and each parcel, without and with the influence of the LID.
9. Special benefit to parcels with building improvements is derived from the difference in intensity of use and market value, based on overall highest and best use, without and with the LID project.
10. Existing easements and rights of way affecting individual parcels are the same, both without and with the LID project.

Hypothetical Conditions

A hypothetical condition is that which is contrary to what exists, but is supposed for purposes of analysis. For this study, market value of each parcel is estimated without the LID and again assuming that the LID project has been completed as of the same date.

Legal Description of the LID Project

The local improvement district is located in Sections 3, 9, 10, 15 and 16 of Township 20 North, Range 4 East, W. M., in Pierce County, Washington. It is as shown on the maps and other exhibits contained in this report. A narrative legal description of the entire boundary is located in the formation ordinance for the LID, a copy of which is in the Addenda of this report.

Scope of the Study

The scope of the study and this report which resulted from the assignment involved estimating the current market value of each assessable parcel both without and with the LID project completed. As part of this assignment, the appraisers made a number of independent investigations and analyses. Area and neighborhood analysis included examination of Pierce County and City of Edgewood data such as demographic information, land use policies and trends, growth forecasts and employment statistics.

Site and improvement descriptions were obtained from the Pierce County Assessor's records and by field inspection of the exterior of the subject parcels. Individual parcel land areas are based on information from the City of Edgewood. Information on wetlands and other unusable areas was provided by personnel with the City of Edgewood. In the event that additional pertinent and credible information becomes available, the right is reserved, if necessary, to revise the valuation conclusions presented in this report.

Three valuation approaches (each of which encompasses various techniques) consisting of the Income Approach, Sales Comparison Approach and Cost Approach were considered, where appropriate, in the valuation estimates for each parcel, both without and with the LID project.

Due largely to the current economic recession and the dramatic decreases in market activity for all types of real estate (resulting from uncertainty, difficulty in obtaining financing, reduced demand and other factors), the market data research phase of this assignment encompassed the study of sale transactions occurring since 2004. Older market sale information was used as background and for comparison with current trends. Most market data analyzed focuses on sales of improved and unimproved property in the subject and competing

areas occurring since the beginning of 2008. It was obtained from commercial market data research services which compile such information (including the Northwest Multiple Listing Service and Commercial MLS) together with public records, individual buyers and sellers, local Realtors, developers and area property managers. Some income and expense information was also reviewed, as well as market rental rates for retail and office space in the local market. Pertinent data was analyzed and used as a basis for valuation conclusions.

Construction cost information was based on review of the Marshall Valuation Service Handbook, a nationally recognized cost-reporting authority, and discussions with knowledgeable local commercial contracting companies. Summary tabulations of sales of both vacant land and improved properties and comparable rental rate information are presented in the Addenda. Also included are representative market sales from competing areas. Properties located outside the subject vicinity which sold are identified by address; location maps are retained in the appraiser's files. As stated, individual appraisal reports for each affected property have not been prepared. Market value conclusions for each parcel both without and with the LID completed are shown on the spreadsheet located near the front of this report.

Parcel Descriptions

Based on Pierce County Assessor's records, descriptions of site and improvement characteristics for each parcel within the LID boundary have been assembled. Summary data is contained in the spreadsheet and more detail can be found in the analysts' work files. Copies of last conveyance deeds of record and photographs are also in the files and available to the client upon request.

Scope of Services

The scope of services Macaulay and Associates, Ltd. has been engaged to perform is to estimate the special benefit adhering to each affected parcel as a result of the LID-funded project. To reflect the market's perception of total special benefit accruing to affected property as a result of the project and to maintain proportionality amongst the special benefit estimates, market value is estimated both without the LID and with the LID in place, as of the same date. Under this valuation basis, properties are treated consistently and market value estimates without and with the completed LID most accurately reflect the special benefit indicated by the market. The special benefit estimated for each parcel is an increase in value under the same market conditions as the benefit estimated for every other assessable parcel within the LID boundary.

LID Project Description

Overview

As discussed, the project consists of constructing 47,500± linear feet (LF) of sanitary sewer lines comprised of 22,300± LF of sanitary sewer force main and 25,500± LF of gravity sewer main, as well as three pump stations. In addition to the above, several parcels within the LID boundary require the use of grinder pumps. The project will replace existing on-site septic systems with the infrastructure and facilities needed for sewage collection within the main commercial area of Edgewood.

The project is designed to address current wastewater needs and enable the City of Edgewood to move forward with growth and economic development along the main commercial corridor flanking Meridian Avenue. A public sewer system is necessary to support future urban growth and is a key component of the City of Edgewood's Comprehensive Plan.

Project History

The City of Edgewood and the local community have been working towards completion of this infrastructure project since the 1990s. A report entitled, "*Edgewood Sewer Feasibility Study*" was completed in March 2002 and the city's General Sewer Plan was adopted in August 2004. As indicated above, due to the poor soils in the Edgewood area and current widespread use of on-site septic systems, development within the city has stagnated. This is evidenced by a lack of growth (limited development has taken place within the city in the past 15 years).

Discussions about the project moved forward until, in April 2008, local improvement district pre-formation agreements were presented to the city. In August 2008, Resolution 08-242 (intent to form LID) was passed and in October 2008, Ordinance No. 08-0306 (LID #1 formation ordinance) was passed. Tetra Tech and BHC Consultants of Seattle were hired for design, construction, and assistance with environmental reports, permits and coordination with regulatory agencies. Bid contracts were awarded in November 2009 and work on the pipeline and pump stations began in December 2009. To date, the pipeline is complete, as are the pump stations and the grinder pump lines are under construction.

Discussions with local real estate brokers indicate a widespread perception that property in the city cannot compete with surrounding markets due to the lack of sanitary sewer service. This is further evidenced by the absence of restaurants and larger retail centers; several are located along Meridian Avenue in the City of Milton, just across the street from the subject LID area.

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In general, due to the current economic recession and continuing difficulties in obtaining adequate financing for planned projects, market demand for unimproved commercial, multi-family residential and single family residential land in the subject area is limited. However, because the current lack of sanitary sewer service has significant adverse impacts on site preparation costs and allowable development density, there is a substantial difference in market value of the subject parcels without as opposed to with the availability of sewer service. In addition, the proposed zoning changes in allowable density and height restrictions would not be possible without a sewer system in place. Implementation of the proposed project will improve the competitive position of the City of Edgewood in the surrounding market.

A number of improved parcels within the LID boundary have had failing septic systems or complaints which have been brought to the attention of the Tacoma-Pierce County Health Department. Additionally, in many cases, due to poor soil conditions (including wetlands, clay content and a high water table), development density which is allowed under the current zoning regulations cannot be achieved. In addition to eliminating the need for adequate soil percolation to accommodate on-site systems and the setting aside of land for septic drainfields and reserves (which reduces buildable area), even more intensive development than the currently allowed maximum densities is possible with the LID completed.

Summary Project Description

The area to be served by the recently installed sanitary sewer project is as shown on the exhibits included in this report. Briefly, the project's components are as follows:

- Installation of 47,500± lineal feet (LF) of sanitary sewer lines comprised of 22,300± LF of sanitary sewer force main and 25,500± LF of gravity sewer main. Branch lines serve properties along secondary roads, away from the Meridian Avenue corridor.
- Installation of three major pump stations.
- Installation of grinder pumps on individual parcels as needed (dictated by topography).
- Construction of side sewers to the edge of the public rights of way to service each tax parcel within the LID boundary.

Basis of Valuation

Application of Market Data Analysis

In order to estimate special benefit, a base study was made of the real estate market in the subject neighborhood and competing areas to aid in understanding the effects of the basic economic, governmental, environmental, physical and social forces on the LID area. This study was then analyzed to establish trends and value ranges for the various classes of land use within the subject area, without and with the LID project.

These value ranges were further refined into market value estimates for each individual parcel within the LID boundary, taking into consideration such factors as highest and best use, zoning and physical characteristics including parcel size, configuration, road frontage, topography, available utilities, usable area and existing improvements.

Market data on property with elements of similarity to the subject parcels, without and with LID improvements, was investigated. An analysis of highest and best use was made. Highest and best use is defined as the reasonable, probable and legal use of vacant land or an improved property which is (1) physically possible, (2) legally permissible, (3) financially feasible and (4) maximally productive.

Primary Premises Utilized in the Special Benefit Study

1. A preliminary proportionate assessment is attributed to all assessable properties specially benefitted by the project.
2. The ownership of each parcel listed with a recommended preliminary assessment is an assessable entity.
3. Aspects of property considered as a "parcel" include (a) the economic unit, (b) the physically contiguous unit and c) the continuity of ownership. As required by state statute, recommended assessments for parcels comprised of more than one county tax lot are segregated into individual tax parcels. It should be emphasized that the individual parcels, as defined above, are the entities to which the special benefits accrue and against which the proposed assessments are levied. Division of the proposed assessments into tax lots used by the Pierce County Assessor's office, artificial boundaries from an appraisal standpoint, are made to comply with statutory requirements and the city's accounting procedures.

Valuation Methodology

Special benefit accrues to affected properties due to the project by increasing allowable development density, decreasing the negative stigma associated with septic systems in the area, and permitting a wider variety of uses. Also, the project results in higher density allowances within several zones (TC, C and MUR), allowing for more intensive future development since the recently enacted land use changes cannot be fully realized by affected property without sewer service. With the LID project completed, the entire vicinity's reputation, aesthetic appeal and character are improved, creating a more desirable location for commercial property owners and tenants as well as the owners of residential property.

but as high
a value.

Although current market conditions have weakened due to the ongoing economic recession, these attributes are reflected in both the "without" and "with" valuations. Recognizing this, land value is enhanced due to the elimination of costs and risk associated with on-site septic systems, potential development density is increased since septic drainfield areas no longer need to be set aside, and the significant improvement in the neighborhood's reputation and aesthetic appeal, as discussed above. In addition, due to the poor soils in the area, allowable density in the "without LID" scenario is not achievable. Implementation of the project will improve the competitive position of the City of Edgewood in the surrounding market. Typically, special benefit to property is reflected in the underlying land value. As the result of a project like this, the market will pay a higher price for land; in this instance, probable increases in land value are primarily due to the aforementioned factors.

With the LID in place and recent adoption of the proposed changes to the city's zoning code, the eight land use designations governing the subject area remain intact; however, the Town Center Density Overlay has been eliminated. Excerpts from the new zoning regulations, to aid in understanding the impacts on individual parcels of the zoning changes, are included in the Addenda of this report and summarized in a prior section. Zoning designations are also shown for each parcel on the assessment roll spreadsheet near the front of this report. In general, current development density is dictated by soil conditions as they relate to county and state health district regulations. Intensity of use remains low in many instances due to the prevailing poor soil conditions and reliance on on-site septic systems.

Without the sewer infrastructure project, future development density would remain low, and, in most cases, the maximum density allowed under both the current and prior zoning categories is not achievable without sanitary sewer service. With the project completed, more intensive land use, especially for commercially and multi-family residentially zoned parcels, would be feasible.

A significant factor in the valuation is the fact that, without the sewer project, the intensity of use allowed under the prior zoning regulations could not in most instances be achieved. Furthermore, it is reasonably probable that the recently enacted changes to several of the subject zoning categories would not have been initiated without the project.

Individual properties within the proposed LID boundary specially benefit from the project by enhanced neighborhood reputation, potential for more intensive land use, and elimination of the risk of on-site septic system failures. Additionally, sewer infrastructure provides for higher water quality and infiltration instead of increased runoff, facilitating aquifer recharge and protection of groundwater resources.

As previously stated, special benefit accrues to affected properties due to the proposed project by enhancing the neighborhood's reputation, aesthetic appeal and character, and creating a more desirable location for both residential property owners as well as commercial owners/operators and tenants. As stated, revisions to the current zoning for a significant number of parcels allow more intensive future development, but only with the availability of sanitary sewer service. Although real estate market conditions have weakened in recent years, these attributes are reflected to some degree in both the "without" and "with" valuations. This is largely recognized in the analysis of land value since special benefit to property is typically reflected in the value of the underlying land. As a result of a project like that which is proposed for the subject area, the market will pay a higher price for land. In this instance, probable increases in land value are primarily due to the aforementioned factors.

In order to estimate the probable impact on market value, comparable sales involving property in the subject vicinity and similar areas were analyzed, together with review of other large sewer infrastructure and other projects whereby the areas' locations were enhanced or significant zoning changes occurred as a result of the LID project. In the late 1990s in the City of Ocean Shores, a city-wide LID project installed a new wastewater collection system which provided sanitary sewer service to over 13,000 parcels of residential and commercial land. Completion of the project resulted in land value increases (\$10,000 to \$20,000 for unimproved lots) and significantly more market activity for several years.

During the same period, when real estate markets were in a downturn similar to the current time, the City of Lynnwood completed a \$60+ million project called the I-5/195th Street SW interchange which vastly improved access to the Alderwood Mall regional shopping center and some 300 surrounding commercial properties. Without this project, no expansion or renovation of the mall would have been allowed and

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rezoning to allow more intensive commercial uses was contingent on this road infrastructure improvement project. Depending on specific locations within the vicinity, land value increases were in the \$5.00/SF to \$8.00/SF range on the east side of Interstate Highway 5 where the project allowed rezoning and redevelopment of the area to occur.

The primary economic factor influencing the increase in market value of properties within the proposed LID boundary is the intensity of use to which the land can be put with, as opposed to without, sanitary sewer service. Without sewers, ultimate development density depends on parcel size and on-site soil conditions as governed by the existing zoning classifications and health department requirements. With sewer service available, higher density commercial office, retail or mixed use developments could be constructed in accordance with the recently enacted zoning changes to the City of Edgewood Zoning Code. Also, some residential lots have the potential for subdivision while existing residences could be remodeled/expanded for more intensive use of the land. There is considerably more cost and risk associated with development without sewer service, both for commercial and residential property and many densities allowed prior to the zoning changes are not currently achievable.

With sewers in place, vacant or underdeveloped sites can be developed to their highest and best economic use, as dictated by the city's land use designations. Highest and best use of vacant sites or properties with expansion or renovation potential without sewers is for investment hold. Parcels already developed to their highest and best use experience more modest market value increases although the risk of septic system failure is eliminated and investment in these properties becomes more desirable compared to the existing status without sewer service and the risk of complications associated with on-site septic systems.

The potential intensity of use of existing buildings which generally represent the highest and best use of the site would also increase with sewer service; for example, existing commercial businesses could accommodate more employees and provide more services (based on demand), renovation and expansion would be allowed, and uses which generate more waste than those that were permitted at the time of original building construction would be allowed (i.e., restaurants).

Land-to-building ratios were examined and those parcels having excess land analyzed separately. Excess land can be utilized to expand an existing structure, create a separate development or it can be subdivided and sold for other uses once sewer service is available. Potential development density, both without and with sewers, was considered for all property within the LID boundary. Some parcels contain wetland areas of varying sizes; the best available information gathered to date (from the City of Edgewood) was used to estimate

X developable area. If additional pertinent information on wetlands or other unusable areas is provided, the right is hereby reserved to adjust the valuation conclusions contained in this report.

Current sales of unimproved and improved property in the subject market area were researched, together with other sale transactions in Pierce and King counties, to form the basis for estimating land value both without and with the LID. Reflecting the ongoing economic recession, the pace of market activity in the subject area remains slow; most land sales occurred based on an investment hold premise. For some parcels which sold, development plans which were in place at the time of the transaction have been abandoned or tabled indefinitely.

Other market areas with generally similar physical and economic characteristics, such as the nearby cities of Milton, Pacific, Algona, Puyallup, Sumner, Tacoma and Federal Way, were also researched. In the Addenda are summary tabulations of sales of multi-family residential, single family residential and commercial property within the LID boundary and in the greater subject neighborhood occurring over the past five years. Additional sales involving property in both Pierce and King counties and in similar areas were researched and pertinent information is retained in the appraisers' files.

Property Valuation Summary

X The current pace of new commercial development in the City of Edgewood, as in most other areas, is slow, due in part to the economic recession. Another factor restricting growth and development in Edgewood is the lack of necessary infrastructure. There is an abundant supply of available developable land within the city; even with the project in place, the rate of future absorption will be modest due to the large supply, and is reflected in land value estimates. In estimating current land value, a significant discount is applied in recognition of the costs and risks associated with slow absorption and longer holding periods, particularly for the single family residential land due to weak market conditions. However, due to the city's location close to surrounding built-up cities and with large tracts of available developable land, Edgewood is poised for considerable future potential growth and development. With sewers in place during the holding period before land is developed or redeveloped, there is more "upside potential" to the investment and investors/developers will be better positioned when the real estate market recovers.

Any developer/investor will consider the costs and risk associated with investing in unimproved land in this market and absorption time would be a major factor when considering land value with sewers in place. Based on study of the area's demographics and supply and demand trends, highest and best use of many of the

unimproved parcels within the LID boundary, even with sewer service, is for anticipatory future investment ("investment hold"). Any prudent purchaser would recognize the time required in the pre-development phase for preliminary planning and permitting, recognizing that development is at a minimum one and one half to two years in the future. This is particularly true of single family residential properties within the LID boundary. The multi-family residential market is showing positive signs, with low vacancy rates and strong demand. The commercial market is also starting to improve, as evidenced by the proposed Les Schwab tire store to be located on Meridian Avenue. Financing is becoming more readily available for multi-family and commercial projects, which will spur further growth and development.

Less special benefit accrues to parcels already improved to their highest and best use (when virtually all of a site's land area is used to support the existing development) which are served by functioning septic systems. There is, however, some special benefit to these parcels since increased development in the area and maturing of the market will result in increased demand, one result of which is significantly decreased investment risk for commercial property.

For properties with excess land, i.e., more land than is currently being utilized, additional special benefit is generated by the project. Excess land can be used for the expansion of existing structures, development of additional buildings for the same or another use, or segregation and sale as a separate parcel. Factors such as the specific locations of buildings on a site, the extent and configuration of excess land, and the age and condition of existing septic systems are considered when estimating market value differences on a parcel-by-parcel basis without as opposed to with the LID project in place.

Because individual appraisal reports are not prepared, the following sections provide general information on the valuation process; the reader is referred to the spreadsheet at the beginning of this report for more site-specific information. Additionally, properties within the LID boundary are subsequently described and discussed in groups based on similarities such as zoning, access and features of the immediate neighborhood. LID map numbers for parcels located within each group are identified and generalized valuation discussions, including estimated special benefit ranges, are presented.

Due to topography or distance from the main sewer line in Meridian Avenue, there will be additional costs to serve a number of parcels. Estimates of these additional costs for specific parcels were provided by the City's consulting engineers. Adjustments to the estimated land value with the project completed were made in recognition of atypical costs to individual owners. Similarly, extraordinary costs to serve the three parcels

to the east owned by the school district were estimated; these costs are reflected in the land value with the LID completed.

The current economic recession, which began in late 2007 and continues to affect not only the Pacific Northwest but the entire nation, has impacted the region's commercial real estate markets with decreased retail sales activity, higher vacancy rates, reduced demand and greater risk inherent in real estate investment. This is also true of the office market, with reduced demand and higher vacancy rates. In the single family residential arena, the market for homes has been drastically reduced, home mortgage financing regulations are much more stringent and obtaining financing for the development of "raw" land remains extremely difficult. Based on land sales reviewed to date, together with discussions with knowledgeable local investors, landowners and commercial real estate brokers, these current conditions are reflected in the analyses of both commercial and residential property within the LID boundary.

As stated above, in the multi-family residential market, vacancy rates are falling and rents are increasing. According to the March 2011 Dupre + Scott Apartment Vacancy Report, it is anticipated that rental demand will increase faster than new supply. The market vacancy rate in the Puget Sound region decreased from the fall 2009 rate of 7.2% to 5.0% in fall 2010 and is currently at 4.6%. This trend is due in large part to uncertainty in the housing market caused by the economic recession and the fact that fewer buyers are now willing or able to purchase single family homes.

Apartment rental rates in the region over the past year have climbed just 2.5%; however, rents in newly constructed complexes are up 6.1% in the past six months. In Pierce County, the occupancy rate is currently 94.4% for existing construction and 88.7% for new construction. In fall 2010 there were 42,659 multi-family units in the Pierce County market, with 153 new units. During the same period, 409 units were removed from the inventory and the total number of available units is currently at 42,703 with only 80 new ones projected to be coming onto the market in fall 2011. In comparison, in the King County area, the occupancy rate for existing construction is 95.7% and for new construction it is 65.0%. There are 422 new units coming on the market during the first half of 2011 with 1,359 units expected by fall 2011. In the tri-county area (King, Pierce and Snohomish), the occupancy rate for existing construction is 95.4% and for new construction it is 64.4%, with 530 new units in the first half of this year and 1,439 more projected for fall 2011.

Estimates of market value of each affected parcel are made both without and with the LID, based on individual highest and best use; they are shown on the spreadsheet beginning on page 11. As stated above,

the following paragraphs divide the subject area into sections of land exhibiting similar characteristics. Each is discussed separately, together with a summary of estimated special benefit due to the project.

Business Park-Zoned Parcels

Brief Description

Encompassing map numbers 1 through 14, this portion of the district is generally bordered by the King-Pierce County line on the north, Jovita Boulevard on the southeast and Meridian Avenue on the west. Individual properties are a mix of improved and unimproved land with large tracts of unimproved land or land containing older single family residences. One parcel to the north contains a number of industrial/warehouse buildings and an older single family residence, while at the south end is a new Auto Zone retail store. The two northernmost parcels have inferior access from 31st Avenue South and no direct access to Meridian Avenue. One parcel in this district is split-zoned with the western portion designated Business Park and the eastern portion (along Jovita Boulevard and 105th Avenue E) zoned SF-3, Single Family Moderate Density. Several parcels along Jovita Boulevard are improved with single family residential or duplex structures. The existing residences are mostly modest-sized bungalows built from 1900 to 1970. Individual tax parcel sizes range from 10,000± square feet to 400,000± SF. Topography within this area ranges from general level to moderately sloping.

Access to and through the neighborhood is adequate (except for the northernmost two parcels) from either Meridian Avenue or Jovita Boulevard, a moderately traveled two-lane secondary arterial connecting with SR 167 to the east.

Without the LID

The current zoning designation for all parcels (except the eastern portion of split-zoned map number 8) is Business Park. However, as previously noted, maximum allowable development density is not typically achievable utilizing on-site septic systems and lower intensity use is probable without sanitary sewers. Development relying on individual septic systems entails considerable costs and risk; these factors were considered in estimating market value of individual parcels without the LID project. Existing homes in this area are a "grandfathered" use (pre-dating the zoning code) and are not currently allowed in the Business Park designation. The majority of the area is underdeveloped or vacant land and grandfathered uses.

Additional negative factors influencing this group of properties without the project are the continuing risk of septic system failure as well as on-going maintenance costs for existing systems, together with the risk and uncertainty associated with obtaining permits for the remodeling of existing residences. Additionally, the higher intensity land uses in the zoning code could not be implemented without an area-wide sanitary sewer infrastructure.

As stated, unimproved parcels in this area vary widely in physical characteristics; differences include such factors as parcel size, configuration, topography, road frontage and soil conditions. For improved property, additional differences considered include number of existing structures, building sizes, years built, location on the site and whether there is excess land available for further development.

With the LID

With the LID project completed, zoning remains the same. Allowed uses encompass a mix of light industrial and professional office and development density is no longer dependent on soil conditions (allowable density under current zoning can be achieved). Land value estimates with the LID in place are higher due to increased development density, reduced development costs and the risk of failing septic systems is eliminated.

In addition to the desirable attributes of enhanced neighborhood reputation and significantly decreased risk of failing systems, lots with sufficient excess land can be subdivided for future development, existing residences can be remodeled, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new structures is greatly enhanced since drainfields and reserve areas are no longer needed. Additionally, property listed for sale with the availability of sanitary sewer service generally experiences shorter marketing times. Because of the currently stagnated development in the City of Edgewood, the availability of sewers would provide the positive attribute of improved marketing potential.

Special Benefit Summary

The reader is referred to the spreadsheet on pages 11 to 13 for site-specific estimates of individual "without LID" and "with LID" market value estimates. In general, "without LID" land values range from \$3.00/SF to \$5.00/SF and estimated special benefit ranges from \$1.00/SF to \$3.00/SF depending on parcel size, access and location.

Commercial-Zoned Parcels

Brief Description

Located in the north-central portion of the LID, many of the commercially-zoned parcels front on Meridian Avenue from just north of Jovita Boulevard, south to just north of 18th Street Court E. Several of the parcels are split-zoned with the commercial portion along the Meridian Avenue frontage and the eastern portion zoned MR-2, Mixed Residential Moderate Density. The MR-2 portions are generally vacant; one parcel is improved with an older single family residence and barn. There are also two Public-zoned tracts within this area, one of which is a substation and the other is unimproved.

There is a wide variety in parcel sizes, configuration, quality of existing improvements, and highest and best use of the land. The commercially zoned portion is a mixture of vacant or underimproved land with older warehouses and several older residences utilized as office or retail space. A significant feature of this portion of the district is the Plemmons Hutchens property; it is split-zoned, comprised of four tax parcels and occupies almost 22 acres north of 13th Street Court E. A church with associated daycare and office is located in the southern portion of the commercially-zoned section. At the north end, adjacent to the BP zone, there is one small strip retail structure. Several of the split-zoned parcels contain wetlands and topography within the commercial zone is generally level and at grade with Meridian Avenue at the north end, while portions at the south end (south of 16th Street E) are above or below grade of Meridian Avenue. There are approximately 50 parcels in the commercial section, two of which are zoned Public.

As with the BP zone, access to and through the neighborhood is adequate, primarily by Meridian Avenue. In addition to Meridian, access is via Jovita Boulevard, a moderately traveled two-lane secondary arterial connecting with SR 167 to the east. Also, 8th Street E and 16th Street E are secondary arterials within the neighborhood. A major project to widen Meridian Avenue through the area is scheduled to begin next month.

Without the LID

As stated, most parcels in this area are zoned Commercial (C) or split-zoned Commercial and MR-2 (Mixed Residential Moderate Density). Two parcels in this section are zoned Public (P). The Commercial zone permits a range of commercial, retail and business uses that serve and link a broad geographic area.

Potential development density utilizing on-site septic systems is not typically achievable relying on individual septic systems and lower intensity uses are commonplace. Considerable cost and risk is inherent in reliance

on septic systems, as evidenced by the failure of a number of systems within this area in the past five years. These factors were considered in estimating market value of individual parcels without the LID project.

Negative factors influencing this group of properties without the project are the continuing risk of septic system failure as well as on-going maintenance costs for existing systems, together with the risk and uncertainty associated with obtaining permits for remodeling or expansion of existing improvements or for the subdivision and creation of new parcels. Potential intensity of use of currently unimproved parcels in this area is limited by the requirements associated with on-site septic systems, particularly for commercial uses. This is further evidenced by the absence of restaurants and larger retail centers; several are located along Meridian Avenue in the City of Milton, just across the street from the subject LID area. Sanitary sewer service will benefit the subject parcels by improving their competitive position in the surrounding market.

Unimproved parcels in this area vary in physical characteristics; differences include such factors as parcel size, configuration, road frontage and soil conditions. For improved property, additional differences considered include the type of improvement, size, year built, location on the site and whether there is excess land available for further development. Without the LID project, existing improvements are served by on-site septic systems and any newly constructed buildings would require individual septic systems, meaning that the parcels must be large enough to accommodate drainfields and any necessary reserve areas.

The possibilities for new commercial development in this zone without the LID project are extremely limited. As discussed, the proposed higher intensity land use classifications cannot be implemented without an area-wide sanitary sewer system. Any prudent investor would recognize the costs and risk associated with development relying on on-site septic systems. These risk factors would be evaluated in any purchase/investment decision both on a cost basis and on the basis of reduced allowable development density.

With the LID

With the LID project completed, commercial development is emphasized and multi-family housing is allowed at densities of up to 48 DUs per acre when part of a mixed use project. Residential uses are only allowed in the commercial zone if they are part of a mixed use project. Maximum floor area ratio (FAR) with bonus features is 3:1 and the FAR without bonus features is 1:1. Maximum impervious surface coverage is 85% and maximum building height with bonuses is 45 feet. In general, these development standards and densities are achievable with sewer service.

With the LID project completed, development density is no longer dependent on individual parcels' soil conditions. In addition to the desirable attributes of enhanced neighborhood reputation, lots with sufficient excess land can be utilized more intensively for future development, existing structures can be remodeled/expanded, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new buildings is greatly enhanced since drainfields and reserve areas are no longer needed.

The negative stigma due to the perception by real estate market brokers that property within the LID area does not compete with surrounding markets due to the lack of sanitary sewer service is eliminated, improving the competitive position of the subject parcels. Additionally, property listed for sale with the availability of sanitary sewer service generally experiences shorter marketing times. The availability of sewers would provide the positive attribute of improved marketing potential.

Special Benefit Summary

Current estimated land value of parcels in this section without the LID generally range from \$4.00/SF to \$10.00/SF depending on parcel size, zoning (split-zoned and Public-zoned parcels) and location. Special benefit to commercial parcels typically varies from \$2.00/SF to \$4.00/SF. Map numbers 27 and 37 contain significant wetland areas and reflect lower special benefit estimates as a result of physical characteristics.

Town Center-Zoned Parcels

Brief Description

There are 54 tax parcels within the Town Center-zoned section; five are zoned Public, four are split-zoned and one is Mixed Residential Moderate Density. Parcel sizes vary from 4,700± SF to just over 14.5 acres. The boundaries of this segment are from just north of 18th Street Court E at the north end, south to just north of 29th Street E.

Topography of the Town Center area is generally level along Meridian Avenue. One tract fronting on Meridian, map number 85, is improved with a mini-storage facility and office building. The City of Edgewood Fire Department (fire station and excess land) is located in this area, as is the city hall and Northwood Elementary School (all zoned Public). A bank branch and gas station/convenience store are at the intersection of Meridian Avenue and 24th Street East. Several parcels near the intersection of Meridian and 24th Street East are improved with older commercial/retail structures as well as residences utilized as offices and there are also several older warehouse structures. An apartment complex is located just east of the intersection, comprised of two tax parcels which are split-zoned Town Center and Single Family Moderate

Density (SF-3). Characteristics of existing structures vary from modest-sized residences to commercial and industrial structures of varying size and age.

Access to and from the neighborhood is good with Meridian Avenue as the main thoroughfare and 24th Street E providing adequate traffic circulation.

Without the LID

As stated, most parcels in this area are zoned Town Center (TC) with several parcels split-zoned. The Town Center-zoned vicinity has the most intensive commercial focus in Edgewood and encourages planned multi-family/mixed use and commercial activities in a pedestrian-oriented atmosphere.

Potential development density utilizing on-site septic systems is not achievable and commercial and multi-family residential growth is stagnant. This is evidenced by septic system failures at higher density uses within the district. These factors were considered in estimating market value of individual parcels without the LID project. Other negative factors described in the prior section also affect property in this segment.

The unimproved parcels in this area vary in physical characteristics; differences include such factors as parcel size, configuration, road frontage and soil conditions. For improved property, additional differences considered include the type of improvement, size, year built, location on the site and whether there is excess land available for further development.

Without the LID project, existing structures are served by on-site septic systems and any newly constructed buildings would require individual septic systems, meaning that individual parcels must be large enough to accommodate drainfields and any necessary reserve areas, in addition, intensity of development would remain low as the allowed density is not achievable under current zoning. The possibilities for new commercial/mixed use development in the Town Center zone without the LID project are extremely limited.

Any prudent investor would recognize the costs and risk associated with development relying on on-site septic systems. These risk factors would be evaluated in any purchase/investment decision, on the basis of both cost and reduced allowable development density. Conversations with local brokers indicate that the City of Edgewood is not currently considered to be competitive in the local market, as further evidenced by the lack of restaurants and larger convenience retail properties like those located on the west side of Meridian Avenue.

near the intersection of 8th Street E, within the City of Milton, which have sewer service (just west of the LID boundary).

With the LID

With the LID project completed, zoning remains the same with maximum allowable building height (with density bonuses) of 55 feet. Allowable maximum residential net density may be greater than 48 DUs per acre if the residential component is part of a mixed use project (density controlled by building height). Allowed impervious surface is 90% of lot area and maximum floor area ratio with density bonuses is 4:1.

As development density is no longer dependent on soil conditions and allowable density can be achieved, development possibilities for the area are greatly enhanced. Lots with sufficient excess land can be subdivided more intensively for future development, existing structures can be remodeled/expanded, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new buildings is greatly enhanced since drainfields and reserve areas are no longer needed. Additionally, property listed for sale with the availability of sanitary sewer service generally experiences shorter marketing times. The large number of unimproved and underimproved sites as well as the availability of sewers would provide the positive attribute of improved marketing potential and make property within the subject area more competitive with surrounding markets.

Special Benefit Summary

Land values without the LID generally range from \$4.00/SF to \$8.00/SF. The Town Center and Commercial-zoned areas experience the greatest special benefit due to enhanced development potential and expanded range of viable uses. The resulting special benefit estimates reflect the cost, risk and absorption time for these parcels to be developed. Improved properties with existing septic systems experience fairly modest special benefit, consistent with other parcels within the district having no additional expansion potential. Estimated special benefit to properties in this segment zoned Town Center generally ranges from \$1.00/SF to \$4.25/SF.

Single Family Moderate Density (SF-3) and Single Family High Density (SF-5)-Zoned Parcels

Brief Description

West of the intersection of 24th Street East and Meridian Avenue is an area of Single Family High Density (SF-5) zoning and parcels split-zoned with Single Family Moderate Density (SF-3). All the parcels front on 24th Street East and several are long and narrow in configuration. Two split-zoned parcels are on the north

side of 24th Avenue East, adjacent to the west of Northwood Elementary School. The remaining parcels in this section are zoned Single Family High Density (SF-3).

Individual properties in this segment are a mix of improved and unimproved tracts of generally level land. Parcel sizes vary widely, from 15,311± SF lots to tracts containing 5± acres. Improvements are a mixture of older single family residences as well as multi-family structures (duplexes and triplexes) with some vacant land. Many of the larger parcels have the potential to be subdivided to create one or more additional lots without the project, depending on parcel-specific soil conditions.

Access to and from the neighborhood is good with Meridian Avenue as the main thoroughfare and 24th Street providing adequate traffic circulation.

Without the LID

As stated, all the parcels in this area are zoned Single Family High Density (SF-5) with two split-zoned with Single Family Moderate Density (SF-3). Potential development density utilizing on-site septic systems is generally not achievable. However, additional lots relying on individual septic systems could be created on some parcels although this would entail considerable cost and risk. These factors were considered in estimating market value of individual parcels in this section without the LID project.

Negative factors influencing this group of properties without the project are the continuing risk of septic system failure as well as on-going maintenance costs for existing systems, together with the risk and uncertainty associated with obtaining permits for remodeling or expansion of existing improvements or for the subdivision and creation of new parcels. Potential intensity of use of currently unimproved parcels in this area is limited by the requirements associated with on-site septic systems. Additionally, as reiterated throughout this report, the higher densities allowed by the recently revised regulations could not be implemented without an area-wide sanitary sewer infrastructure. Furthermore, development density allowed under prior regulations could not in most cases be realized without sewers.

The unimproved parcels in this area vary in physical characteristics; differences include such factors as parcel size, configuration, road frontage and soil conditions. For improved property, additional differences considered include the type of improvement, size, year built, location on the site and whether there is excess land available for further development.

Without the proposed LID project, existing residences are served by on-site septic systems and any newly constructed homes would require individual septic systems, meaning that individual parcels must be large enough to accommodate drainfields and any necessary reserve areas. Considerable cost and risk is inherent in reliance on septic systems, as evidenced by the failure of septic systems within this area in the past five years. These risk factors would be evaluated in any purchase/investment decision, on the basis of both cost and reduced allowable development density.

With the LID

With the LID project completed, maximum development potential can be achieved and development is no longer dependent on individual parcels' soil conditions. In addition to the desirable attributes of enhanced neighborhood reputation, lots with sufficient excess land can be subdivided more intensively for future development, existing structures can be remodeled/expanded, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new buildings is greatly enhanced since drainfields and reserve areas are no longer needed. Additionally, property listed for sale with the availability of sanitary sewer service generally experiences shorter marketing times.

Special Benefit Summary

Without the LID project, estimated land value for parcels in this segment generally ranges from \$0.75/SF to \$5.00/SF as some have subdivision potential without sewers, while others do not and for yet others this potential is very limited. Land value estimates with the LID in place reflect the cost, risk and absorption time for subdivision. The difference in land value (special benefit) also reflects the increased potential development density with sewer service. Estimated special benefit to single family residential parcels typically ranges from \$0.85/SF to \$1.70/SF depending on existing improvements and septic system risk.

Mixed Use Residential-Zoned Parcels

Brief Description

This segment of the LID encompasses the southern portion of the project area from just north of 29th Street East, south to the intersection of 32nd Street East and Meridian Avenue. Located south of the highest density Town Center district, it allows for a mix of multiple family and single family residential as well as commercial, professional office and some light industrial uses.

Six of the subject parcels are split-zoned with the portions fronting on Meridian Avenue zoned MUR and the eastern and western portions zoned SF-3. Tracts range in size from 3,800± SF to 3± acres. Several parcels are improved with warehouses and single family residences utilized as office/retail space but many of those, from a highest and best use standpoint, are underimproved.

As with other areas in the LID, access to and through the neighborhood is good with Meridian Avenue East connecting to Highway 161 and 410 to the south and Interstate Highway 5 to the west.

Without the LID

In the Mixed Use Residential (MUR) zone, a variety of commercial and multi-family uses are permitted. Potential development density utilizing on-site septic systems is not achievable and commercial and multi-family residential growth is stagnant. Additional tracts relying on individual septic systems could possibly be created on some parcels; this would, however, entail considerable costs and risk. These factors were considered in estimating market value of individual parcels without the LID project. Other negative factors described in a prior section also affect property in this segment.

The unimproved parcels in this area vary in physical characteristics; differences include such factors as parcel size, configuration, road frontage and soil conditions. For improved property, additional differences considered include the type of improvement, size, year built, location on the site and whether there is excess land available for further development. Without the project, existing improvements are served by on-site septic systems and any newly constructed buildings would require individual septic systems, meaning that the parcels must be large enough to accommodate drainfields and any necessary reserve areas.

The possibilities for new commercial or mixed use development in the MUR zone without the LID project are extremely limited without an area-wide sanitary sewer system. Any prudent investor would recognize the costs and risk associated with development relying on on-site septic systems. These risk factors would be evaluated in any purchase/investment decision both on a cost basis and on the basis of reduced allowable development density.

With the LID

With the LID in place, zoning is the same with a maximum building height of 35 feet and maximum allowable development density for a single use project at 24 DUs per acre. As part of a mixed use project, allowable

density increases to 48 DUs per acre. The maximum allowable impervious surface is 75% and maximum FAR (with density bonuses) is 2:1. Again, even though these dimensional requirements and allowable densities are in place without the LID, they are generally not achievable without sanitary sewer service.

With the LID project completed, development density is no longer dependent on individual parcels' soil conditions. Lots with sufficient excess land can be subdivided more intensively for future development, existing structures can be remodeled/expanded, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new buildings is greatly enhanced since drainfields and reserve areas are no longer needed. Additionally, property can be marketed with the availability of sanitary sewer service, which creates greater market appeal and shorter marketing times.

Special Benefit Summary

As shown on the final assessment roll, the highest estimated special benefit in this area accrues to vacant land or improved parcels with excess land suitable for additional development. With the LID in place, there is significantly less investment risk for commercial property. Any prudent purchaser/investor would recognize this, together with the variety of allowable uses and development density that sewer service provides. Land values without the LID project generally range from \$4.00/SF to \$8.00/SF in this section. With the project completed, land value increases by approximately \$1.50/SF to \$3.00/SF.

Public-Zoned Parcels

Brief Description

There are ten tax parcels which are zoned Public within the LID area and one split-zoned between Public and Town Center. These parcels are located throughout the LID area with two in the Commercial zone, five (and the split-zoned tract) in the Town Center area and three parcels to the east, in the non-contiguous portion of the LID.

One of the two parcels to the north surrounded by commercially zoned land is vacant and the other contains an electrical substation. Parcels surrounded by the Town Center zone include the city hall and City of Edgewood Fire Department (fire station and excess land). To the west, adjacent to the SF-3 and SF-5 parcels, is Northwood Elementary School and to the east of the LID area, surrounded by Single Family Low Density (SF-2) zoning, are three contiguous parcels owned by a school district.

Without the LID

The Public zoning district provides for activities of the state and local government as well as semi-public institutions providing necessary public services. The potential for additional development on the parcels zoned for public use is very limited without the project as on-site septic systems would be needed. It is not probable that any significant redevelopment or expansion of the existing schools, fire station or city hall would be achievable without sanitary sewer service.

As mentioned, there is a 1997 Interlocal Agreement between the City of Edgewood and Puyallup School District No. 3. Under this agreement, the Northwood Elementary School building (map numbers 78 and 83), located west of Meridian Avenue, currently has sewer service without the LID. However, the 1997 agreement relates only to the existing school building. The City's General Sewer Plan included the Northwood school site within the boundaries of phase 1, which would require connection to the sewer if available for any renovation or new structure.

In 2008 the city and the school district entered into another interlocal agreement, this time involving the Northwood site as well as the Edgemont/Hilltop campus. In the 2008 agreement, the district agreed to disconnect from the existing line and connect to the new line which runs along 24th Street East upon filing for a building permit for a renovated Northwood school. Thus, any renovation or improvement of the Northwood site requires connection to the new sewer line constructed by the LID. The Edgemont Junior High School property (map numbers 158 through 160) utilizes an on-site septic system. No expansion or remodeling of the school building would be allowed without sewer and, if the existing septic system failed, curing the problem would entail considerable costs.

With the LID

With the LID project completed, improvements on the parcels zoned for public use can be renovated or expanded. Additionally, the sites can be redeveloped to their highest and best use with sewer service.

Special Benefit Summary

In Section 35.43.130 of the Revised Code of Washington (RCW), it is stated that property owned by public entities such as cities, towns and school districts is to be evaluated for the purpose of estimating and levying local improvement assessments "according to the standards afforded by similarly situated property" which is not publicly-owned.

For purposes of this analysis, each parcel under public ownership is viewed in the context of the zoning regulations governing adjacent tracts. Map numbers 158 through 160 are surrounded by land zoned for low density single family residential use and this is considered to be the most likely zoning if the tracts were not zoned Public. Additionally, there is another \$135,000± in costs to extend the sewer line east from Meridian Avenue to serve the property and this extraordinary cost was also considered in the analysis. In the case of map numbers 78 and 83, an interlocal agreement provides sewer service to an existing building; this fact was considered in the "before LID" valuation estimate. For these five tax parcels, all of which are owned by Puyallup School District No. 3 and currently configured as two large tracts located ½± mile apart, additional consideration was given to both the existing low intensity uses as schools and to the intended future uses of each of the two sites. Estimated special benefit to parcels in this segment generally ranges from \$0.25/SF to \$2.00/SF.

Overall Special Benefit Summary

As presented in this special benefit/proportionate assessment study, individual property assessments are fair and in proportion to each other. The single family residential-zoned parcels reflect the lower special benefit amounts and therefore the lowest recommended assessments. This is reasonable given the currently weak condition of the single family residential market. Estimated special benefit to the Business Park-zoned land in the northern portion of the LID is higher as a result of more intensive use, superior market conditions and generally more favorable locational factors. The Commercial and Town Center-zoned parcels reflect the highest special benefit and recommend assessment amounts due to superior zoning, location and market conditions as compared to other areas within the LID boundary. The southern portion, zoned Mixed Use Residential, experiences slightly lower special benefit (and therefore recommended assessments) compared to the Commercial/Town Center portions, due to inferior zoning and locational amenities. The table on the following page generally summarizes the estimated special benefit ranges for the various categories of land within the LID boundary (a small number of parcels fall outside these ranges).

Macaulay & Associates, Ltd.

Real Estate Appraisers & Consultants
2927 Colby Avenue, Suite 100 • Everett, WA 98201
Everett 425-258-2611 • Seattle 206-382-9711 • Fax 425-252-1210

May 10, 2011

Mr. Zach Lell, City Attorney
City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372-1513

RE: Meridian Avenue Sewer Project LID Number 1, City of Edgewood, Pierce County, WA. Job No. 09-348.

Dear Mr. Lell:

Our final special benefit/proportionate assessment study for the Meridian Avenue sewer local improvement district (LID) project has been completed. Personal inspections have been made of the exterior of all parcels within the LID project boundary, as depicted on the maps presented in this report, together with inspections of other property in the subject vicinity and competing areas. Summary data on each parcel within the proposed boundary is shown in the spreadsheet starting on page 11. More detailed property description information is contained in the appraisers' files and is available upon request.

The personal inspections, together with a study of current market data in the subject area and competing market areas, have been conducted for the purpose of forming opinions as to the special benefit and recommended final assessment to each affected parcel. Special benefit estimates are summarized for each parcel within the LID boundary which is specially benefitted by the sewer infrastructure project. The estimates of special benefit presented herein reflect the difference in market value without, as opposed to with, the LID project assumed complete as of the May 10, 2011 valuation date.

This document is a description and discussion of the final special benefit study, which uses mass appraisal techniques and is reported in a summary format including narrative and tabular presentation. The analysis is for internal use by the client, the City of Edgewood, and this report is intended to comply with Standard 6 of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Foundation for a summary mass appraisal report. As such, it includes limited discussions of the data, reasoning and analyses utilized in the valuation process; supporting documentation is retained in the appraisers' files. The depth of discussion contained in the report is specific to the needs of the client and for the intended use stated herein. It conforms with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include USPAP, as well as additional reporting requirements which are discussed herein. The appraisers are not responsible for unauthorized use of this report, which is the result of a limited valuation process.

Typically, special benefit/proportionate assessment studies are based on both written and oral presentations. The written portion consists of this narrative report, of which the spreadsheet is an integral part (tabular presentation). In consideration of the complexity of the work completed, and in order to provide more discussion and explanation, a verbal presentation and response to questions at the LID final assessment roll hearing are also considered to be parts of the assignment.

A key element of this special benefit study stems from the fact that important changes in land use regulations allowing more intensive development have recently occurred, as part of the city's development code update. While the names of several zoning categories governing the subject area are unchanged, revisions to both the development code and the city's comprehensive plan were approved by the Edgewood City Council as of April 26, 2011 and became effective on May 9, 2011. These recent revisions have a significant effect on the subject area. Not only is more intensive development now allowed (with sewer service), it is important to note that a number of uses permitted prior to the revisions could not be achieved without sewers.

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Basis of Valuation

Application of Market Data Analysis

In order to estimate special benefit, a base study was made of the real estate market in the subject neighborhood and competing areas to aid in understanding the effects of the basic economic, governmental, environmental, physical and social forces on the LID area. This study was then analyzed to establish trends and value ranges for the various classes of land use within the subject area, without and with the LID project.

These value ranges were further refined into market value estimates for each individual parcel within the LID boundary, taking into consideration such factors as highest and best use, zoning and physical characteristics including parcel size, configuration, road frontage, topography, available utilities, usable area and existing improvements.

Market data on property with elements of similarity to the subject parcels, without and with LID improvements, was investigated. An analysis of highest and best use was made. Highest and best use is defined as the reasonable, probable and legal use of vacant land or an improved property which is (1) physically possible, (2) legally permissible, (3) financially feasible and (4) maximally productive.

Primary Premises Utilized in the Special Benefit Study

1. A preliminary proportionate assessment is attributed to all assessable properties specially benefitted by the project.
2. The ownership of each parcel listed with a recommended preliminary assessment is an assessable entity.
3. Aspects of property considered as a "parcel" include (a) the economic unit, (b) the physically contiguous unit and c) the continuity of ownership. As required by state statute, recommended assessments for parcels comprised of more than one county tax lot are segregated into individual tax parcels. It should be emphasized that the individual parcels, as defined above, are the entities to which the special benefits accrue and against which the proposed assessments are levied. Division of the proposed assessments into tax lots used by the Pierce County Assessor's office, artificial boundaries from an appraisal standpoint, are made to comply with statutory requirements and the city's accounting procedures.

ORDINANCE NO. 11-0361

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, APPOINTING A HEARING EXAMINER AND FIXING A TIME AND PLACE FOR HEARING ON THE FINAL ASSESSMENT ROLL FOR LOCAL IMPROVEMENT DISTRICT NO 1, AND DIRECTING THAT NOTICE THEREOF BE GIVEN IN THE MANNER REQUIRED BY LAW; ESTABLISHING HEARING AND APPEAL PROCEDURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the final assessment roll for Local Improvement District No. 1 ("LID No. 1"), which was created by Ordinance No. 08-0306 passed by the City Council on October 28, 2008, will be prepared as provided by law and will be on file with the City Clerk, and it is necessary to fix the date for a hearing thereon; and

WHEREAS, the City Council has elected to appoint a hearing examiner to conduct the hearing as permitted by RCW 35.44.070.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Designation of Hearing Officer. Stephen Causseaux, Jr. of McCarthy, Causseaux and Hurdelbrink, Inc. is hereby appointed to act as the officer to conduct the hearing regarding the final assessment roll for LID No. 1.

Section 2. Public Hearing Date. The public hearing on the final assessment roll for LID No. 1 will be held before the hearing examiner at 6:00 p.m., local time, at Edgemont Junior High School, 2300 110th Avenue East, Edgewood, Washington on June 1, 2011. The City Clerk is instructed to cause notice to be given both by mailing and publication as required by law.

The hearing examiner shall consider the objections to the final assessment roll and may lower one or more assessments or confirm the roll as prepared.

Section 3. City Council Consideration of Recommendations. Upon receipt of the hearing examiner's report, the City Council will review the same. As soon as all timely appeals from the examiner's findings and recommendations have been decided or the time allowed for filing appeals has expired with no appeals having been filed, the City Council may accept the assessment roll as prepared, or may correct, revise, raise, lower, change or modify the roll or any part thereof, or may set aside the roll and order the assessment to be made *de novo*, and at the conclusion thereof, confirm the assessment roll by ordinance. If an appeal has been filed from the findings on recommendations of the hearing examiner, it shall be heard and determined and the results thereof incorporated into the assessment roll before it is confirmed.

Section 4. Appeals from a Hearing Examiner's findings or recommendation. Any property owner that has filed a written objection prior to or at the hearing may appeal the hearing

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Exhibit 4 Page 1 of 5

ORDINANCE NO. 11-0366

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, CONFIRMING THE ASSESSMENT ROLL FOR LOCAL IMPROVEMENT DISTRICT NO. 1 TO FINANCE CERTAIN SEWER MAIN EXTENSIONS ALONG MERIDIAN AVENUE, AS PROVIDED BY ORDINANCE NO. 08-0306, AND LEVYING AND ASSESSING THE COST AGAINST THE PROPERTY AS SHOWN ON THE ASSESSMENT ROLL; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the assessment roll levying the special assessments against the property located in Local Improvement District No. 1 in the City of Edgewood, Washington (the "City"), has been filed with the City Clerk as provided by law; and

WHEREAS, by Ordinance No. 11-0361, the City Council appointed Stephen Causseaux, Jr. to act as the hearing examiner to conduct the hearing; and

WHEREAS, notice of the time and place of hearing thereon and making objections and protests to the roll was published at and for the time and in the manner provided by law fixing the time and place of hearing before a hearing examiner thereon for the 1st day of June, 2011, at the hour of 6:00 p.m., local time, at Edgewood Junior High School, 2300 110th Avenue East, Edgewood, Washington, and further notice thereof was mailed by the City Clerk to each property owner shown on the roll; and

WHEREAS, at the time and place fixed and designated in the notice the hearing examiner held the hearing and all written protests received were considered and all persons appearing at the hearing who wished to be heard were heard, and the hearing examiner, sitting and acting as a Board of Equalization for the purpose of considering the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the improvement, issued Findings of Fact, Conclusions and Recommendations; and

WHEREAS, in accordance with RCW 35.44.047, the City Council concurs in the special benefits appraisal and assessment methodology utilized by Macaulay & Associates and deems this methodology to more fairly reflect the special benefits to the properties being assessed; and

WHEREAS, any property owner that filed a written objection prior to the hearing could appeal the hearing examiner's decision by filing a written protest with the City within 14 days of the date of the notice of the hearing examiner's decision for the City Council's consideration.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Appeal of Hearing Examiner's Decision. Ten appeals of the hearing examiner's decision were received. The Council has considered each appeal and the assessments

**SUMMARY OF SPECIAL BENEFIT STUDY AND ASSUMPTIONS FORMING THE
BASIS OF RECOMMENDED FINAL ASSESSMENTS – CITY OF EDGEWOOD
MERIDIAN AVENUE SEWER PROJECT (LID NUMBER ONE)**

Introduction

Utilizing limited assignment/mass appraisal techniques, this special benefit study involves appraisal of the market value of the fee simple interest in each subject parcel both without the local improvement district (LID) and with the local improvement district project assumed completed. The difference in market value, if any, without and with the LID is the special benefit accruing due to the project. The terms "without" and "with" are used instead of "before" and "after" to remove the inference of a time interval between the two value estimates. The meaning of the two sets of terms is identical.

Client and Intended Users

The client is Mr. Zach Lell, City Attorney. Intended users of this report are the City Attorney, the City of Edgewood, its duly appointed representatives and the owners of property within the LID boundary.

Purpose and Intended Use of the Study

The purpose and intent of this study is to estimate recommended final assessments to assist the City of Edgewood in allocating appropriate, proportionate assessments to each assessable tax parcel within the boundaries of the project which is specially benefitted. To accomplish this, estimates of market value of the fee simple interest in each of the parcels within the LID boundary, based on respective highest and best use, are made, both without and with completion of the project as of the date of this special benefit study.

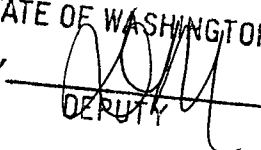
Exposure Period

An exposure period is the estimated length of time the property interest being appraised has been offered on the market prior to a hypothetical sale at market value as of the effective appraisal date. Based on review of comparable sales and discussions with market participants, exposure period for representative parcels within the LID boundary is estimated at 9 to 12 months.

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CITY OF EDGEWOOD

Petitioner,

vs.

HAIST, LLC, et. al

Respondents.

NO. 42842-3-II

DECLARATION OF SERVICE

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused this Declaration and the following documents:

1. RESPONDENT DOCKEN ET AL'S. MOTION TO FILE OVERLENGTH BRIEF
2. REPLY BRIEF OF RESPONDENTS ERIC DOCKEN, DOCKEN PROPERTIES, LP, ENID AND EDWARD DUNCAN, JAMES AND PATRICIA SCHMIDT, DARLENE MASTERS, AKA THE BRICKHOUSE, LLC, GEORGE AND ARLYN SKARICH, SUELO MARINA, LLC

to be served on July 31, 2012 on the following parties and in the manner indicated below

Joseph Zachary Lell
Wayne D. Tanaka
Ogden Murphy Wallace
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686

☒ by United States First Class Mail
☐ by Personal Delivery

ORIGINAL

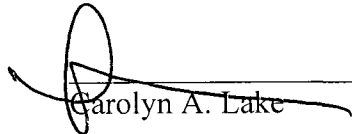
☐ by Facsimile
☐ by Electronic Mail

Margaret Archer
Gordon Thomas Honeywell, LLP
PO Box 1157
Tacoma, WA 98401-1157
United States

☒ by United States First Class Mail
☐ by Personal Delivery
☐ by Facsimile
☐ by Electronic Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 31st day of July 2012 at Tacoma, Washington.


Carolyn A. Lake